INDEX

CITATIONS

CASES:

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

NO. 313

BROTHERHOOD OF RAILROAD TRAINMEN, *et al.*,
Petitioners,

vs.

CHICAGO RIVER & INDIANA RAILROAD COMPANY, *et al.*,
Respondents.

On Writ of Certiorari To The United States Court of Appeals For The Seventh Circuit

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BRIEF FOR THE RESPONDENTS

Opinion Below

The district court's findings of fact, conclusions of law, and decree appear at R. 44-50. The judgment of affirmance by the court below appears at R. 55-56 and was based on its prior ruling reported in 229 F. 2d 926 (R.30-39).

Jurisdiction

The judgment of the court of appeals sought to be reviewed was entered on May 17, 1956 (R. 55-56). The petition for writ of certiorari was filed on August 13, 1956, and was granted on October 15, 1956 (R. 57). The jurisdiction

of this Court is invoked under Section 1254(1) of the Judicial Code.

Questions Presented

1. Is the Railway Labor Act a "one-way" statute making Adjustment Board jurisdiction mandatory for railroads but optional for unions?

2. May a federal court enforce mandatory provisions of the Railway Labor Act?

Statute Involved

The pertinent provisions of the Railway Labor Act (45 U.S.C. § 151, *et seq.*) are set out in the Appendix, *infra*.

Statement

The facts of this case are not in dispute. Petitioner Brotherhood of Railroad Trainmen (herein sometimes referred to as Trainmen) will not let the National Railroad Adjustment Board (herein referred to as Adjustment Board) decide certain grievances submitted to it. Instead of following the statutory adjustment procedure, the Trainmen have called a strike. (R. 6-8, 21, 46, 48.)

The case arose over demands by the Trainmen concerning 21 grievances of members of that union against the employing carrier, The Chicago River and Indiana Railroad Company (herein referred to as River Road). The union and the employer exhausted negotiations on the property. (R. 5-6, 46.) The statutory procedure thereafter is for the interested employee, usually through his union, to submit to the Adjustment Board (or a system board) such of his grievances as he wishes to process further (R. 21, 47-48). Evidently the Trainmen originally intended to follow that procedure, for a contract to which the employer and the Trainmen are parties provides that the decision of the highest officer on the carrier designated to handle the claims

shall be binding and final unless "proceedings • • • are instituted" within one year thereafter (R. 6). But instead of instituting proceedings in the Adjustment Board or elsewhere, the Trainmen accumulated these grievances and called a strike (R. 7, 46).

Because of the serious nature of this threatened strike, the National Mediation Board, on its own volition and despite its questionable jurisdiction, proffered its services, docketed the dispute as Case A-4524, and attempted to mediate the dispute (R. 7, 46). The River Road accepted the proposals of the National Mediation Board, but the Trainmen remained adamant. Thereupon the National Mediation Board suggested arbitration, and the River Road accepted the suggestion. After the Trainmen refused arbitration, the National Mediation Board informed the parties by telegram that its efforts had failed. Immediately thereafter, in a last effort to insure the following of orderly procedures prescribed by the Railway Labor Act, the River Road filed the grievances with the Adjustment Board. Instead of permitting the Adjustment Board to decide the grievances, and indeed instead of even waiting 30 days after the failure of mediation, as required by Section 5 First of the Railway Labor Act (45 U.S.C. § 155 First), the Trainmen promptly called a strike for four days later. (R. 7, 9, 24, 46.)

Respondents then brought this action to compel the Trainmen to follow the orderly procedures of the Railway Labor Act, that is, to permit the processing of the 21 grievances through the Adjustment Board where they are pending as 20 cases, two having been consolidated. Respondents alleged that maintenance of the status quo would not hurt the employees, but would benefit them, since it is to their interest to avoid cessation of work and loss of pay during adjustment proceedings (R. 21).

The respondent River Road is the railroad which operates the switching and yard facilities at the Chicago Stockyards.

The other respondents are the railroads which use those facilities for moving their cars into and out of the stockyards. (R. 4, 44.)

As shown by the verified complaint, this strike would halt the operations of all trains into and out of these stockyards. It would force the River Road to lay off 1,100 employees who would lose in excess of $12,000 a day in wages. It would cost the River Road thousands of dollars a day. It would require an embargo of all shipments into and out of the stockyards, causing irreparable damage to the 28 respondent railroads and the 600 industries served. (R. 7, 8, 46-47.)

Attached to the motion for preliminary injunction were two affidavits (R. 22-24). One of them was the affidavit of Martin W. Clement, who was chairman of the railroad committee appointed to deal with the 1934 amendments to the Railway Labor Act and who testified at the Congressional Hearings thereon. His affidavit states (R. 22) his understanding that the Railway Labor Act makes it mandatory to resort to the Adjustment Board for grievances processed beyond the carrier, and forbids strikes over grievances.

The district court did not construe the Railway Labor Act but merely held that under the Norris-La Guardia Act the court lacked jurisdiction to grant injunctive relief (R. 26).

The district court's decision was reversed by the court of appeals (R. 40). Thereafter the district court entered a permanent injunction in respondents' favor, observing the proviso of Section 2 Tenth of the Railway Labor Act (45 U. S. C. 152 Tenth) against requiring an individual to render labor without his consent, and permitting an individual to quit his job (R. 49-50). The petition for certiorari sought a review of the judgment affirming this final injunction (R. 55-56).

SUMMARY OF ARGUMENT

I.

The Railway Labor Act of 1934 makes handling of grievances by way of the Adjustment Board mandatory for both employees and employer. Section 3 First (i) of the Act provides specifically for the reference of grievances to the National Railroad Adjustment Board "by either party." The relevant statutory language is incomprehensible with any other interpretation.

If there is any doubt about the meaning of the statute, its legislative history shows that Congress intended to make the Adjustment Board procedure mandatory for the determination of grievances, the "minor disputes" in the railway labor world. Thus the manager of the bill in the Senate explained to his colleagues that the railroad labor organizations had agreed under the bill "to compulsory arbitration of their [grievance] disputes." Similarly, Commissioner Eastman, the chief draftsman of the bill, advised the President that it was "designed to * * * provide for compulsory adjustment of individual grievances" in order to prevent strikes.

George M. Harrison, the spokesman for the labor organizations, also advised the Congressional Committees that the 1934 Adjustment Board provisions provided for "compulsory arbitration" of grievances. Mr. Harrison made it plain that if grievances were processed beyond the property of the carrier they must be submitted to the Adjustment Board, and that labor was giving up the right to strike over grievances in return for the Adjustment Board provisions of the bill.

This Court has always assumed that such was the meaning of the Act. It has frequently recognized that the Adjustment Board was established for the compulsory deter-

mination of grievances. See *Elgin, J. & E. R. Co.* v. *Burley*, 325 U. S. 711, 727; *Order of R. Conductors* v. *Southern R. Co.*, 339 U. S. 255, 256-257; *Slocum* v. *Delaware, L. & W. R. Co.*, 339 U. S. 239, 242; *Transcontinental Air* v. *Koppal*, 345 U. S. 653, 660.

II.

The commands of the 1934 Railway Labor Act cannot be enforced without the assistance of the federal courts. That is why this Court has held from the first that the federal courts must furnish the needed enforcement. *Virginian R. Co.* v. *System Federation No. 40*, 300 U. S. 515, 545, 552; cf. *Texas & N. O. R. Co.* v. *Brotherhood of Clerks*, 281 U. S. 548.

Ever since the *Virginian* case, it has been clear that the provisions of the Railway Labor Act "render nugatory the earlier and more general provisions of the Norris-La Guardia Act" (300 U. S. at pp. 562-563). It is immaterial that the enforcement decree might enjoin a strike. *Brotherhood of Railroad Trainmen* v. *Howard*, 343 U. S. 768.

Finally, Section 8 of the 1934 Railway Labor Act specifically repeals all inconsistent Acts. The 1932 Norris-La Guardia Act must be read in the light of the 1934 Railway Labor Act (*United States* v. *Hutcheson*, 312 U. S. 219, 235), and the specific terms of the later statute must prevail over the general terms of the 1932 statute (*Clifford F. MacEvoy Co.* v. *United States*, 322 U. S. 102, 107).

ARGUMENT

Introduction: Handling of Railway Labor Disputes.

This case is not an attempt to impress compulsory arbitration of labor contracts upon the railroad industry. Whatever may be the arguments or facts about a "right to strike," this case has no relation to any theory that railroad employees may not band together to enforce their demands as to the terms of their employment.

This case concerns the realization, first by people in the field for labor and management, and later by Congress, that the cause of collective bargaining will be furthered by separating the different problem of enforcing individual rights under existing contracts from the major collective bargaining function of "legislating" terms of employment. One cannot fully comprehend the subject matter of this case without understanding this fundamental discovery and how it has influenced the history of legislation in this field and the machinery of the present Railway Labor Act.

1. Major and Minor Railway Labor Disputes.

Although one viewing the subject of labor-management disputes is often appalled at the variety of matters which can become the source of friction, close analysis will reveal that there are in general two categories of disputes. One is the sort that results in newspaper headlines. Most recently, such headlines revealed that the railroads and many of the unions signed contracts which are to last for several years and which make elaborate provisions for adjusting rates of pay in the light of the cost of living and other factors. The negotiation of contracts may result in a national strike, as happened recently in Canada over the railroads' attempt to eliminate firemen on the diesel-powered trains.

These disputes over negotiating terms of employment are often referred to as "major disputes." This category partakes of the nature of legislation in the labor field and concerns rules or contracts for the future. The Railway Labor Act refers to this category of disputes as "disputes concerning rates of pay, rules, or working conditions" (Section 2(4), 45 U.S.C. § 151a).

The other type of dispute occurs in the course of the every-day application of any working agreement. These are the day-to-day questions which arise when the general terms of any rule or contract are taken from their austere context and attempted to be fitted to people. For example, a collective bargaining contract may call for penalty pay for certain types of work, and a question will arise whether a certain employee performed penalty-pay work. This is simply application and interpretation of the contract, and an employee's complaint of misapplication is a grievance. Such disputes will occur under any form of contract or legislation which acts on people. A standard general rule is that an intoxicated employee will be disciplined. A grievance may occur over whether a certain employee was intoxicated on duty. This is, again, a matter of adjusting the individual case to the already agreed upon general rule.

These latter disputes are described by the Act as "disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions" (Section 2(5), 45 U.S.C. § 151a). Sometimes they are called "minor disputes." Perhaps a more descriptive term would be "individual cases" as opposed to the category of collective-bargaining issues which have been described above as major disputes. Just as the act of collective bargaining is comparable to legislation, so the settlement of these individual disputes is closely akin to adjudication. Cf. Kheel, "Umpires of 10,000 Labor Disputes," N. Y. Times Magazine 19 (Jan.

20, 1957); Davey, Labor Arbitration: A Current Appraisal (1955) 9 Industrial & Labor Rel. Rev. 85.

In *Central of Georgia Railway Co.* v. *Brotherhood of Railroad Trainmen*, No. 84, present Term, the Trainmen's brief insists throughout that a major dispute was involved because they were demanding a new contract rule. If the Trainmen are correct in their statement that the *Central of Georgia* case does not involve grievances, the minor disputes, then the decision of the Fifth Circuit in that case is clearly distinguishable from the decision below.

2. **Legislative Treatment of Railway Labor Disputes.**

Since 1888, there has been some form of Railway Labor Act in the United States statutes. From the first, the major emphasis has been on the area of collective bargaining, as would be expected.

The first pertinent statute (25 Stat. 501) provided for voluntary arbitration and also for investigation and publication in connection with any major dispute. Later legislation (Erdman Act of 1898, 30 Stat. 424; Newlands Act of 1913, 38 Stat. 103) stressed mediation and conciliation until after the government operation of the railroads in World War I. The subsequent Title III of the Transportation Act of 1920 (41 Stat. 456, 469), which contained an elaborate system of arbitration of new agreements, broke down when it was declared to be unenforcible. *Pennsylvania R. Co.* v. *United States Railroad Labor Board*, 261 U. S. 72; *Pennsylvania R. System Federation No. 90* v. *Pennsylvania R. Co.*, 267 U. S. 203.

In 1926, the railroads and the unions drafted an agreed bill which they presented to Congress. This is the Railway Labor Act which is still on the books (44 Stat. 577, 45 U.S.C. § 151 *et seq.*). Its method of regulating collective bargain-

ing was to return to the original ideas of 1888. The method was to promote collective bargaining by every means, including federal mediators to assist in mediation and conciliation. If the parties cannot agree to arbitrate any unsettled issues and mediation fails, the President of the United States may appoint some citizens to investigate the dispute and report the facts to him. It is hoped that the publicity in connection with this will affect the parties' intentions. The 1934 amendments to the Act did not substantially affect this method of handling collective bargaining.

The handling of individual cases (grievances and contract interpretation and application) has followed a different path as would be expected from the nature of such disputes. Kheel, "Umpires of 10,000 Labor Disputes," N. Y. Times Magazine 19 (Jan. 20, 1957). Prior to 1917, the union would aggregate dissatisfied individuals' claims and call a strike. This required convincing non-grieved employees that they should strike because the next time it might be their grievance. The system, obviously, was only strong so long as other employees were willing to sacrifice their families and hopes for the individual claims of fellow employees.

The first major attempt to improve this method arose out of the 1917 special commission award adopting the 8-hour day. The 8-hour agreement eventually gave rise to 30,000 disputes of individual application. The railroads and certain brotherhoods agreed on a "Commission of Eight" (4 labor members and 4 management members) to handle all such disputes arising over the application of the eight-hour award. This Commission was continued during the World War I government operation of the railroads (by General Order No. 13) as Adjustment Board No. 1, and its functions were expanded to handle all grievances of operating employees. Two other adjustment boards, for nonoperating

employees, were established by General Orders 29 and 53. Wolf, The Railroad Labor Board (1927) 11, 50-52. These were bodies of an even number of members chosen half by the unions and half by the federal management of the railroads.

On return of the railroads to their private owners in 1920, this system of adjustment boards was abandoned. The next several years saw much of the effort of the unions devoted to the re-establishment of these adjustment boards. Section 3 of the 1926 Act facilitated the voluntary creation of such boards, and, indeed, by 1934 a certain number of them were operating.

The 1934 amendments to the Act saw the complete victory of the union effort to settle individual cases through adjustment boards. The unions went to Congress with their complaint that the railroads were refusing to cooperate in establishing voluntary boards. At their behest a wholly new Section 3 was submitted to Congress by the Federal Coordinator of Transportation, Commissioner Joseph B. Eastman of the Interstate Commerce Commission. They asked Congress to replace the prior chaotic method of settling individual cases with orderly procedure. This Congress did for them.

3. Procedures Under the Present Railway Labor Act.

The 1934 Railway Labor Act provides for an Adjustment Board, a Mediation Board, and an Emergency Board. These boards have different functions which should not be confused.

As noted above, there are two types of disputes. The major disputes relate to negotiating new contracts. When such negotiations break down and these bargaining disputes endanger the country, the National Mediation Board steps in. If it fails to persuade the parties to agree, the President

of the United States may appoint an Emergency Board which reports to him what it finds are the facts of the dispute. Neither of these Boards makes any decision which binds the parties.

The Mediation Board does not adjudicate. It assigns one or more mediators to the dispute. The mediator first sits in a room with the agents of one side and listens to their story. He then sits in a room with the other side and listens to their story. Thereafter he shuttles back and forth between rooms as an important message-bearer and interpreter, telling each what the other side is offering and what their reasons are. The hope is that this mediation will succeed in working out some basis of agreement which could not be found by the parties directly.

The Mediation Board was specifically designed by Congress so that it would not decide anything. Since its job is one requiring the confidence of each side, Congress designed the Mediation Board's duties so that the Board would not have to make a decision and thereby run the risk of alienating one side or the other.

The Presidential Emergency Boards are supposed to be investigatory. They report the facts to the President. The hope is that the influence of public opinion will cause the parties to reach an agreement based on this spotlighting of the facts.

When the nature of the Mediation and Emergency Boards is understood, one can understand the reason why the minor disputes are treated differently. These minor disputes involve accrued rights. They are the sort of problem which cannot be avoided in any continuing employment relation, but which, because the relation is continuing, often are magnified into too important an issue.

The handling of these individual disputes, concerning grievances and questions growing out of the operation of existing contracts, is the subject matter of this case. The parties, of course, disagree over whether the statutory handling is mandatory. But both agree that the usual handling contemplated or hoped for by the statute is that now described.

Like all other labor matters, an effort is to be made to settle these within the local railroad organization. If these are to be progressed beyond the local officers of the railroad and the union, Section 3 First (45 U.S.C. § 153 First) provides for their being filed with the National Railroad Adjustment Board.

The Adjustment Board is divided into 4 divisions, depending on the nature of the cases. Disputes like these involving yard-service employees go to the First Division of the Board. The First Division is composed of 10 members. Five of these members are called Labor Members, and five are called Carrier Members. The Labor Members are officers of the various unions, and among them is a vice president of the petitioner Trainmen.

This Board hears claims. If the members split evenly on a claim and cannot agree on a neutral referee, a referee is appointed to break the tie.

The parties may also agree to submit their grievances to special adjustment boards set up locally or specially, subject to the right of either side to discontinue this practice and revert back to the jurisdiction of the national Board (Section 3 Second, 45 U.S.C. § 153 Second).

In recent years the petitioner union and one or two other unions have adopted the practice of accumulating grievances and threatening a strike over them, as was done in

this case. If the strike is likely to cause national harm, the Mediation Board will try to settle it even though the matter may not be within its jurisdiction, as was done in this case. The Mediation Board has explained in its annual reports:

> "However, the National Mediation Board has found it necessary in some instances during recent years to proffer its mediatory services under section 5, First (b) of the act when the failure of the parties to settle dockets of time claims and grievances, or to refer them to the proper tribunal, the Adjustment Board, created emergency situations which threatened to result in strikes." (18th Annual Report of the National Mediation Board (1952) p. 5.)

These same comments have been made in recent years by the Mediation Board in other reports. In its latest report the Mediation Board has said:

> "As in previous reports, the Board again finds it necessary to call attention to the failure to utilize the provisions of Section 3 of the act to resolve disputes involving the application or interpretation of agreement rules and grievances arising thereunder. In November 1955 the Board inaugurated a program of assigning an "E" number series to cases where the Board's mediation services were proffered under the emergency clause of Section 5 of the Railway Labo Act. In many instances, these emergency situations involved strike dockets containing time claims and grievances which should have been referred to the National Railroad Adjustment Board for adjudication" (22d Annual Report of the National Mediation Board (1956) p. 19).

4. **Delay in the Adjustment Board.**

It is alleged that the Adjustment Board docket is so crowded that considerable delay will result if submission is held to be mandatory.

It is true that the First Division docket, but not the docket of the other three Divisions, is congested. The Act provides specific measures to break such congestion. A Division may delegate two of its members to hear cases (Section 3 First (k)) or a Division may establish regional boards to hear cases (Section 3 First (w)).

In 1949 the First Division did establish two regional boards to hear cases in order to clean up its docket. In 1952, the labor organizations, for reasons best known to themselves, revoked their authorization of such procedure. Since then, the First Division's docket has remained congested, but the use of either Section 3 First (k) or Section 3 First (w) could afford relief.

Thus although *amicus* Brotherhood complains of a backlog of cases on the First Division (Br. 27, 41), the unions themselves have been responsible for this backlog.

The 21 grievances in the present case have been abnormally delayed for another reason than a congested docket. Usually the union submits a statement of facts and argument soon after a grievance is filed. Here the union has not yet filed a submission and is still contesting the Adjustment Board's right to consider these grievances.

I.

SUBMISSION OF GRIEVANCES TO THE ADJUSTMENT BOARD IS MANDATORY FOR THE UNIONS AS WELL AS FOR THE RAILROADS.

Part I of petitioners' brief attempts to show that the Railway Labor Act does not require grievances to be processed by the Adjustment Board. However, even Part I of petitioners' brief is based throughout on the Norris-La Guardia Act rather than on the Railway Labor Act. Apparently petitioners have faint hope that their Railway Labor Act arguments can be accepted and therefore have had to resort to the Norris-La Guardia Act (discussed in Part II herein).

It is interesting that neither the petitioners nor the *amici curiae* on their side suggest that the railroads may elect, at their convenience, to abide by the Adjustment Board procedure or to ignore that Board and go their own way. These unions claim this choice of remedy only for themselves.

There is nothing in the history, background, or words of the Railway Labor Act to suggest that Congress was discriminating against the railroads in this regard. A really appropriate description of the Act is that, because of the public interest in industrial peace on the railroads, "It is a double-track system; the trains run both ways simultaneously * * *" (Judge Brown's dissent in *Brotherhood of Railroad Trainmen* v. *Central of Georgia Ry. Co.*, 229 F. 2d 901, 910 (C.A. 5, 1956)).

The wording of this statute itself makes clear that submission of grievances and similar disputes to the Adjustment Board is to be an exclusive procedure in this field. Otherwise, the provision in Section 3 First (i) for reference to the Board "by either party" is utter nonsense.

The legislative history of this statute reveals that Congress was told that it was providing a mandatory procedure for grievance settlement, and that Congress voted in the light of such knowledge.

Finally, this Court through the years has held that aggrieved parties must go to the Adjustment Board. It is unreasonable to assume that this Court meant to foreclose the courts to these parties and at the same time to encourage industrial strife.

It cannot be emphasized too strongly that the court of appeals did not hold that a strike over major disputes is enjoinable. Indeed, respondents concede that the Railway Labor Act permits strikes over major disputes when the procedures of the Railway Labor Act have been exhausted. However, it is their conviction that the Railway Labor Act does not permit strikes over grievances. The nature of grievances as individual problems growing out of agreed-upon contracts makes them particularly adjustable by a form of arbitration. Kheel, "Umpire of 10,000 Labor Disputes," N. Y. Times Magazine 19 (Jan. 20, 1957). This is the reason Congress and the unions selected the Adjustment Board procedure for them.

A. The Statute Itself Prescribes Compulsory Settlement of Grievances.

When this Court was called upon to consider the nature of the Adjustment Board procedure, the majority opinion concluded that such procedure was mandatory. *Elgin, J. & E. R. Co.* v. *Burley*, 325 U. S. 711. The dissent was on other grounds and did not indicate any disagreement with the majority's interpretation of Section 3 First (i). The extensive discussion of the mandatory nature of the Adjustment Board procedure was by a Justice fully cognizant

of the rights of labor. It is cited here to indicate that members of this Court, all of whom were familiar with the atmosphere surrounding the 1934 amendments, believed at the time of the *Burley* decision that the 1934 Act had continued the long tradition of promoting collective bargaining in an atmosphere of mediation and conciliation as far as the normal bargaining disputes were concerned, but that, as to the individual cases of contract application known as grievances, the Act had created a procedure which was wholly at odds with one of mediation and conciliation only. As Justice Rutledge said specifically (325 U. S. at p. 727):

> "The procedure adopted is not one of mediation and conciliation only, like that provided for major disputes under the auspices of the Mediation Board. Another tribunal of very different character is established with 'jurisdiction' to determine grievances and make awards concerning them. Each party to the dispute may submit it for decision, *whether or not the other is willing*, provided he has himself discharged the initial duty of negotiation." (Emphasis supplied.)

Why did this Court at that time consider this Adjustment Board procedure to be mandatory? A detailed study of the statute reveals quite clearly that this conclusion was inescapable then and continues to be inescapable today.

The first pertinent 1934 amendment was to add a statement of five general purposes at the beginning of the substantive sections of the Act. These begin with Section 2 of the Act (45 U.S.C. § 151a) and read in part:

> "General purposes
>
> "(1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; * * * (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the

interpretation or application of agreements covering rates of pay, rules, or working conditions."

The next pertinent amendment was a whole new Section 3 (45 U.S.C. § 153). The prior Section 3 of the 1926 Act had provided:

> "Section 3. First, Boards of adjustment shall be created by agreement between any carriers or groups of carriers as a whole, and its or their employes.
>
> • • •
>
> "Second, Nothing in this Act shall be construed to prohibit an individual carrier and its employees from agreeing upon the settlement of disputes through such machinery of contract and adjustment as they may mutually establish."

This was understood to be a completely voluntary arrangement. Prior to 1934 there were some boards recognized by the standard national operating unions, including the Trainmen. The procedure of these boards was mandatory at the behest of either party, even though the statute did not then require this (The Attorney General's Committee on Administrative Procedure, Railway Labor: The National Railroad Adjustment Board and the National Mediation Board (Monograph No. 17, 1941) Appendix 39-61), and the 1934 enactment carried this mandatory feature into the new Adjustment Board. There were also some system adjustment boards for non-operating employees on a few railroads, often where the bargaining representative was other than one of the national standard unions. Cf. *Atlantic Coast Line R. Co.* v. *Pope*, 119 F. 2d 39 (C.A. 4, 1941).

The new Section 3 began, "First. There is hereby established a Board" and commenced to establish the present Adjustment Board. The majority of the words are devoted to the mechanics of this Board. Then Section 3 First (i) reads (45 U.S.C. § 153 First (i)):

> "The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, *the disputes may be referred* by petition of the parties or *by either party to the appropriate division of the Adjustment Board* with a full statement of the facts and all supporting data bearing upon the disputes." (Emphasis supplied)

Section 3 Second allows the carriers and any class of employees, acting through their representatives, to set up a system, group, or regional board. This permission, however, is limited as follows (45 U.S.C. § 153 Second):

> "In the event that either party to such a system, group, or regional board of adjustment is dissatisfied with such arrangement, it may upon ninety days' notice to the other party elect to come under the jurisdiction of the Adjustment Board."

Thus the statute provides that grievances should first be negotiated on the employing railroad. If such is not satisfactory, then either party may progress the matter further if it desires. It can follow two lines of procedure. If there is a system or other agreed board, it may go to it. But if there is not, as there is not in most situations, or if the local board is unsatisfactory, it must go to the Adjustment Board. This accords with the stated purposes of the statute to avoid interruption of rail service and to provide for the prompt and orderly settlement of grievances and accords with the statutory duty (set forth in Section 2 First) to exert every reasonable effort to settle disputes.

The Adjustment Board provisions of the Railway Labor Act specify that "either party" to disputes over grievances can submit them to the Adjustment Board (Section 3 First (i)). One party thus has the statutory right to go to the Adjustment Board without the consent of the other party. Here the River Road has submitted the grievance disputes to the Adjustment Board. Since 1934 the carriers have docketed hundreds and the organizations thousands of cases with the First Division, which is the Division involved here.

The railroads nowhere contend that the Railway Labor Act prohibits the petitioners from striking over all matters. However, the railroads do contend that disputes over grievances within Section 3 First (i) of the Railway Labor Act must be resolved by the Adjustment Board (or a system board) rather than by a strike. The words of the statute unmistakably require this conclusion.

In fact, even in this Court the *amicus* Railway Labor Executives Association (herein sometimes referred to as RLEA) concedes that Congress made the Adjustment Board "available to either party wishing to submit the [grievance] dispute for decision" (RLEA Br. 5) and "empowered either party, at his or its election, to submit such disputes as were not settled on the property to the National Railroad Adjustment Board" (RLEA Br. 9). Similarly, in the court below petitioners stated (Br. 37):

> "There was little doubt that it was intended [by Congress] that a party could submit grievances to the National Railroad Adjustment Board whether or not the other party is willing."

That admission accords exactly with respondents' argument of this proposition. Here the River Road did submit the disputes to the Adjustment Board, so that even under

the interpretation of petitioners and the *amicus* RLEA, the Adjustment Board must be permitted to decide the disputes unless the Norris-La Guardia Act interferes.

Only the *amici* Brotherhood and RLEA seek solace in the phrase "may be referred" in Section 3 First (i). Naturally Congress was not forcing parties to institute proceedings in the Adjustment Board if they agree on a system board under Section 3 Second (45 U.S.C. 153 Second) or if they do not care to process the grievances beyond the designated "chief operating officer of the carrier" (Section 3 First (i)). Thus George M. Harrison testified for the Trainmen and others (House Hearings,[1] pp. 81-82):

> "So, out of all of that experience and recognizing the character of the services given to the people of this country by our industry and how essential it is to the welfare of the country, these organizations have come to the conclusion that in respect to these minor-grievance cases that grow out of the interpretation and/or application of the contracts already made that they can very well permit those disputes to be decided, *if they desire to progress them,* to be decided, by an adjustment board." (Emphasis supplied.)

The underscored phrase shows that the unions understood that they might not desire to prosecute some claims. However, all claims they wished to prosecute beyond "the chief operating officer of the carrier designated to handle such disputes" (Section 3 First (i)) had to go to the Adjustment Board, which was the avenue substituted for strikes over grievances, unless a system board should be agreed upon under Section 3 Second.

Mr. Harrison proposed the present form of Section 3 Second with its provision for agreed-upon system boards of

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1. Hearings before the House Committee on Interstate and Foreign Commerce (73rd Cong., 2d sess.) on H. R. 7650.

adjustment and for election by either party to return to the jurisdiction of the Adjustment Board if dissatisfied with a system board. Commissioner Eastman's version had not contained this. Mr. Harrison explained (Senate Hearings,[2] p. 38):

> "That amendment [Section 3 Second] is designed to permit freedom of the parties to set up either kind of this machinery which we designate [system, group or regional boards of adjustment], *if* they do not want to go to the national board [the Adjustment Board] with their grievances." (Emphasis supplied.)

The following Harrison explanation (House Hearings at p. 83) of alternatives to the Adjustment Board also shows why the word "may" had to be used in Section 3 First (i) if grievances were prosecuted beyond the carrier:

> "So that controversy has not been disposed of by the House bill, because any division of the national board will have authority, if this bill is passed, to set up a regional board. Then, it not being the purpose of the bill to supply machinery, if the parties can get together themselves, the bill contains a provision that on any railroad or on any group of railroads the management and the employees might voluntarily agree on any other kind of a board for the settlement of their grievances, and if they do voluntarily agree on any other kind of a board, they shall be excluded from the jurisdiction of the national board or the regional board that is established under the power of a diffusion of the national board; but in order to safeguard against the possibility of the parties making a mistake in the establishment of their voluntary machinery and it not working out properly, as they may anticipate, the bill provides that should any party become dissatisfied with such voluntary machinery as they may establish,

2. Hearings before the Senate Committee on Interstate Commerce (73rd Cong., 2d sess.) on S. 3266.

that then on 90 days' notice they shall become subject to the national board and may take their disputes to the national board."

As already noted, in the *Burley* case (325 U. S. 711, 727) this Court has rejected the construction of the phrase "may be referred" in Section 3 First (i) advanced here by two *amici*. Likewise in *Walters* v. *Chicago and North Western Railway Co.*, 216 F. 2d 332, 335 (C. A. 7, 1954) the Court stated:

> "Our attention is called to the fact that Section 3 First (i) of the Railway Labor Act, 45 U.S.C.A. § 153 First (i), provides that after the parties have failed to reach an agreement between themselves 'the disputes *may* be referred by petition of the parties or *by either party* to the appropriate division of the Adjustment Board' (our emphasis), and that if the intent had been to make submission to the Board compulsory the word 'shall' would have been used. We think this contention is met in another case decided by the Supreme Court the same day the Slocum case was decided. In this second case, Order of Railway Conductors of America v. Southern Railway Co., 339 U. S. 255, 256-257, 70 S. Ct. 585, 586, 94 L. Ed. 811, the Court said: 'And if a carrier or a union could choose a court instead of the Board, the other party would be deprived of the privilege conferred by § 3 First (i) of the Railway Labor Act, 48 Stat. 1191, 45 U.S.C. § 153 First (i), 45 U.S.C.A. § 153 First (i), which provides that after negotiations have failed 'either party' may refer the dispute to the appropriate division of the Adjustment Board.'"

In *Rolfes* v. *Dwellingham*, 198 F. 2d 591 (C.A. 8, 1952), the court of appeals affirmed a decree which enjoined the Trainmen from "in any manner" interfering with the Missouri Pacific's employment of plaintiff waiters-in-charge while their grievances were being considered by the Adjustment Board. The injunction was aimed in part at the

resumption of the Trainmen's previous strike over the same grievances, so that the Eighth Circuit also considered the adjustment of grievances to be mandatory. Here too the Trainmen should be enjoined from striking while these 21 grievances are being considered by the Adjustment Board.

B. The Intent of Congress Was to Make the Adjustment Board Procedure Mandatory.

If it is felt that the words of the statute are equivocal, then it is proper to resort to the legislative history of this statute to see if it throws any light on the choice of the words used.

In June 1934, when the members of both Houses of Congress made up their minds whether to vote for or against these amendments, they were told unequivocally that they were voting on compulsory arbitration of grievances. The words used were not subject to misunderstanding by them. The bills which were reported (each House reported a virtually identical bill except for one measure not relevant here) provided such mandatory settlement, and Congress was so informed.

The manager of the bill in the Senate, Senator Dill, the chairman of the Senate Committee on Interstate Commerce, told his colleagues that they were being asked to vote for the following measure:

> "The bill has in it provisions which the railroad employees of the country and their organizations are backing. They have agreed to *compulsory arbitration of their* [*grievance*] *disputes*. That is a new thing in the labor world. That is something which has not been secured in any prior labor legislation that has been proposed." (Emphasis supplied.) (78 Cong. Rec. 12083.)

Congress then enacted that measure.

Petitioners' brief (page 13) states a fictitious question which the Congressmen are suggested to have possibly posed to themselves. The above quotation shows the actual question which they did consider.

Commissioner Eastman was the chief draftsman of the 1934 bill (see the *Burley* case, 325 U. S. 711, 723, note 16). Petitioners and their supporting *amici curiae* try to leave the impression that Commissioner Eastman's last expression on the bill was to indicate that he had doubts about its providing mandatory grievance settlement procedure. However, Commissioner Eastman's final explanation of his draft to Congress will be found at 78 Cong. Rec. 12375 (1934). This was a letter written June 14, 1934, by the Federal Coordinator of Transportation, Commissioner Eastman, and by the Secretary of Labor, Miss Perkins, to President Roosevelt, urging him to press for speedy enactment of the amendments:

> "The Coordinator has drafted amendments to the Railway Labor Act designed to * * * provide for compulsory adjustment of individual grievances. * * *
>
> "If the proposed amendments are not enacted [as to features not relevant here] * * * a host of strike threats and other labor difficulties will arise this summer, demanding Presidential intervention. Similar difficulties are also likely to result because of the unavailability of adequate grievance-adjustment machinery as proposed by the amendments."

Finally, this statutory procedure was backed by the very petitioners and their *amici curiae* in this very case. They helped Commissioner Eastman draft the statute; they testified for it; and they urged their representatives to vote for it. For these reasons, it is interesting to see what they

thought they were urging their Congressmen to support. The bill was described in "Railway Labor Act," XLI American Federationist 1053, 1057 (1934):

> "The power to enforce decisions of the National Board of Adjustment has been criticized by some on the ground that it constitutes compulsory arbitration. This is denied by the railway labor organizations, who point out that the National Board of Adjustment has jurisdiction only over grievances that arise out of the application and interpretation of rules. The settlement of such grievances and the enforcement of decisions of the adjustment board is merely applying the judicial process to the adjudication of grievances. The fundamental proposition of *changes* in wages, hours and working conditions is still a matter of direct negotiations between the carriers and the unions representing the employees. The mediation and arbitration provisions of the original Railroad Labor Act remain intact, and arbitration in these matters is purely voluntary."

This article was by George M. Harrison, then chairman of the legislative committee of the *amicus* Railway Labor Executives Association. Because they are fearful of his 1934 testimony, an effort has been made by petitioners to depict Mr. Harrison as a simple "laboring man" (Br. 16) and the brief of the *amicus* RLEA does not even mention his vital 1934 testimony! Those members of this Court who have served in Congress undoubtedly will agree with respondents that he would be very familiar with legislation he was championing. His position in his field of work can be suggested by this thumbnail sketch: presently, vice president of the AFL-CIO; for years chairman of *amicus* RLEA; prior to 1934 and up to the present, president of the Brotherhood of Railway Clerks.

Since petitioners and their *amici* have exerted great efforts to make the legislative history of the 1934 statute ap-

pear to be equivocal, a rather detailed discussion of its legislative history must be conducted at this stage. The discussion is organized to show what the legislative committees were told, what those committees reported, and what Congress was told it was voting upon.

1. *Committee Hearings.*

(a) *Hearings before the House Committee on Interstate and Foreign Commerce, 73d Cong., 2d Sess. (1934) on H.R. 7650.*

First, Commissioner Joseph B. Eastman, Federal Coordinator of Transportation, testified as to the 1934 amendments, which he had "very largely drafted" (*Elgin J. & E. R. Co.* v. *Burley*, 325 U. S. 711, 723, note 16). Commissioner Eastman complimented the unions on conceding the right to strike in return for the procedures of the Board (p. 47, ff.). He had his legal advisor, Mr. Carmalt, answer questions as to the legality of strikes over grievances, and Mr. Carmalt indicated that such strikes were enjoinable (pp. 62-63).

Commissioner Eastman's first reference to concessions is at page 47:

> "• • • very disturbing conditions have at times been created, especially in recent months. In at least four important instances, strike votes (because of piled up grievances) have been taken for the purpose of creating an emergency which would justify the President in appointing a fact-finding board, so that these grievances and similar controversies might be passed upon by an impartial body. In two of these instances the controversy was adjusted by the parties without the appointment of such a board, but in the two others fact-finding boards became necessary and were appointed.
>
> "The bill before you, H. R. 9689, attempts to remedy both of these deficiencies in the present law. It provides for the creation of a national adjustment board

to which unadjusted 'disputes * * * growing out of grievances or out of the interpretation or application of agreements * * *' may be referred. Please note that disputes concerning changes in rates of pay, rules, or working conditions may not be so referred, but are to be handled, when unadjusted, through the process of mediation. The national adjustment board is to handle only the minor cases growing out of grievances or out of the interpretation or application of agreements. Provision is also made so that deadlocks will be impossible. When the regular members, who will be equally divided between the two sides, disagree, they must call in a neutral member appointed by the mediation board to decide the case. The willingness of the employees to agree to such a provision is, in my judgment, a very important *concession* and one of which full advantage should be taken in the public interest. I regard it as, perhaps, the most important part of the bill." (Emphasis supplied.)

At page 55 the following colloquy occurred between Commissioner Eastman and Representative Cooper:

"Mr. Cooper. Well, what I had in mind was this: There will probably be many disputes that might be settled between employees and the carriers without them being carried to this national board of adjustment.

"Commissioner Eastman. Oh; absolutely.

"Mr. Cooper. And this is only in the last resort.

"Commissioner Eastman. That is right.

"Mr. Cooper. In case the carriers and the employees cannot get together in conferences, then *as a last resort*, it goes to one of these four divisions of the National Board of Adjustment for settlement.

"Commissioner Eastman. That is correct." (Emphasis supplied.)

Then Mr. Eastman answered questions from committee members as follows (at pp. 58-61).

"Mr. Pettengill. And this act does not make a matter of agreeing to arbitrate a matter of discretion? It makes it a matter of duty on the part of the parties to this dispute.

"Commissioner Eastman. Yes; and it is my understanding that the employees in the case of these minor grievances—and that is all that can be dealt with by the adjustment board—are entirely agreeable to those provisions of the law.

"I think that is a very important *concession* on their part. * * * (Emphasis supplied.)

* * * * * *

"Commissioner Eastman. In my answer to you I said there was nothing in the act which provided for the enforcement of those particular decisions. That answer would not apply to decisions of the adjustment board, and they are made final and binding by the terms of this act, and as I understand it, the labor organizations, none of them, are objecting to that provision. They have their day in court and they have their members on the adjustment board, and if an agreement cannot be reached between the parties representing both sides on the adjustment board, a neutral man steps in and renders the decision, and they will be required to accept that decision when made, with respect to these minor matters. They are not the major issues which arise in the labor world. It has to do with the settlement of these grievances. Page 16 defines the disputes which are to be referred.

> 'The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions.'

"Now, the proviso on page 10 protects the individual

who wants to walk out but it does not cover collective action in walking out.[3]

"Mr. Pettengill. Your interpretation there, Mr. Commissioner, would be that under the language at the bottom of page 17, although the individual may be free to walk out, the organization would not be free to call a strike after an award had been made on these matters that are covered by the language at the bottom of page 17.

"Commissioner Eastman. Well, that is my understanding; yes sir.

* * * * *

"Mr. Lea. Under that proviso, in the tenth subdivision, do you take it that that draws a distinction between an individual quitting employment and the employees agreeing collectively to quit?

"Commissioner Eastman. Yes sir. * * *

* * * * *

"Commissioner Eastman. Well, as I say, you have exactly similar provisions in the present labor act with respect to decisions by adjustment boards and where they agree to arbitration, and this law is in effect an agreement on the part of the parties to arbitrate all of these minor disputes.

"The Chairman [Mr. Rayburn]. Was that not one of the reasons, to try to keep down strikes to get people together?

"Commissioner Eastman. Yes. It is a very important part of it. The willingness of the employees to agree to a provision of that sort seemed to me to be a very important and praiseworthy thing.

* * * * *

3. This refers to the proviso in Section 2 Tenth (45 U.S.C. 152 Tenth), which conforms the Railway Labor Act to the Thirteenth Amendment of the Constitution by confirming the right of any individual to refuse to work no matter what limitations other Sections of the Act place upon the power of his union to call a strike. The instant decree observes that proviso to the letter (R. 50).

"Commissioner Eastman. Well, it is my own opinion that there ought not to be strikes with reference to minor grievances of that sort. I should be very unwilling to take away from the employees the right to strike on major issues, but these are not major issues."

Mr. Eastman was asked whether the bill prohibited strikes over grievances. Mr. Eastman asked his legal advisor, Mr. Carmalt, to answer this. Mr. Carmalt was one of those who drafted the amendments. He testified as follows (pages 62-63):

"Mr. Wolverton. Was it the purpose in this act to confer the right to enjoin an organization from disputing a decision made by the Board?

"Mr. Carmalt. The original House bill on this question, was drawn by the employees and the language was, I think, brought directly over in the same form that the employees presented it.

"The question has not arisen therefore, before this morning, and I am more or less thinking out loud in connection with it, because of that fact, but it has seemed to me that the implication lay, from the form of the bill, that a strike on account of these minor grievances would not be permitted and might be enjoined. * * *

* * * * *

"Mr. Carmalt. My opinion is that there should not be the right to strike over grievances of this kind where the Government has provided the machinery whereby the grievances may be considered by an impartial board.

"Mr. Wolverton. Do you think that the language that has been referred to by Mr. Eastman, as confering this absolution, so to speak, so far as an employee is concerned [see note 3, *supra*] would provide equal protection to the organization itself?

"Mr. Carmalt. No; I think this injunction would run

rather as against a strike. There is no other means of resisting the order. But, as to an individual quitting, I think the absolution would be effective.

"Mr. Wolverton. Do you think that the absolution that has been given the employee should likewise be given to the organization?

"Mr. Carmalt. Oh, no.

"Mr. Wolverton. What?

"Mr. Carmalt. No.

"Mr. Wolverton. What did you say?

"Mr. Carmalt. No. The employees, in their drafting of the bill, put that absolution in, and in redrafting the bill we took the language of the present act which would not give that absolution to the organization.

"Mr. Wolverton. So then you assume that under the provisions of this bill an injunction could issue to prevent an organization from going on strike?

"Mr. Carmalt. Such an injunctive process as might be necessary to prevent the strike growing out of the settlement of grievances under Section 3, I should believe would lie."

After Commissioner Eastman was finished, George M. Harrison, then and now chief executive of the Brotherhood of Railway and Steamship Clerks, acted as the spokesman of the unions, including the Trainmen and *amicus* Brotherhood (p. 77). When he came to the place to discuss the New Section 3, he did not dispute Commissioner Eastman's and Mr. Carmalt's expression that the Railway Labor bill contemplated that grievances must be adjudicated by the Adjustment Board and that strikes over them were enjoinable. Instead, he testified (p. 83):

"* * * we believe that it is in the interest of our indus-

try and we believe it is in the interest of the people of this country to maintain peace on these railroads and adjust our controversies [over grievances] in an enlightened and intelligent fashion."

Mr. Harrison gave testimony as to the unsatisfactory working of the then law as to adjustment boards and said (pp. 81-82):

"So, out of all of that experience and recognizing the character of the services given to the people of this country by our industry and how essential it is to the welfare of the country, these organizations have come to the conclusion that in respect to these minor-grievance cases that grow out of the interpretation and/or application of the contracts already made that they can very well permit those disputes to be decided, if they desire to progress them, to be decided, by an adjustment board."

That Mr. Harrison did accept the official interpretation is indicated by the fact that not a single one of the detailed amendments which he suggested changed the official interpretation that the bill made strikes over grievances enjoinable (pp. 93-94).

In the House Hearings, Mr. Harrison concluded his description of the Adjustment Board as follows (p. 89):

"* * * it [the Adjustment Board] is a fire department to settle disputes. We hope the parties will get together and settle their disputes without the need or use of this machinery, and it is a fire department for the purpose of settlement."

He was stating that the Adjustment Board was to be an omnipresent force to settle grievances if the parties could not do so themselves. The Adjustment Board was to be the "fire department" in lieu of resort to economic duress.

Finally, Thomas P. O'Brien, representing the International Brotherhood of Teamsters, also recognized that Section 3 First substituted compulsory adjustment for strikes over grievances. He testified in opposition to Section 3 First as follows (at p. 118):

"We are unalterably opposed to paragraph M, starting on line 19, page 17. This paragraph brings about compulsory arbitration and prevents the use of the only weapon in the hands of organized labor. We believe that a very dangerous precedent would be established with the passage of this paragraph, and to the best of our knowledge it is the first time that any such measure has been enacted by the Congress of the United States. Labor has the right to use the economic strength of their organizations to bring about a betterment of wages and working conditions for the workers of the United States, but with the passage of this paragraph into law that economic force and strength is taken away.

"It was argued by some in this hearing that individual members had the right to quit their employment at any time. While that right is not denied the individual, it is denied the members of the union collectively, and leaves the way open to the courts to enjoin by injunction organizations, their officers and their members, for striking against a decision of a board of mediation [Adjustment Board] which they did not favor. * * * Arbitration should be definitely left to the judgment of both sides to the dispute, by which they have a right, as they have today, to voluntarily submit a controversy to arbitration and by that process to agree in individual cases to accept the decision of the arbitrator as being final and binding on both sides. That is something that may be accomplished by agreement, but we believe it to be unfair to make it a matter of law, which will compel arbitration on both sides under penalty of law."

Clearly there was no misunderstanding at this time as to the meaning and effect of the proposed statute, even by the few who opposed its enactment.

(b) *Hearings before the Senate Committee on Interstate Commerce, 73d Cong., 2d Sess. (1934) on S. 3266.*

Similiar statements were made before the Senate Committee which considered this legislation.

Commissioner Eastman, the principal author of the 1934 Railway Labor Act, was the first witness before the Senate Committee. He quoted with approval from the report of a presidential emergency fact-finding board (composed of the Chief Justice of the Supreme Court of North Carolina, an admiral of the Navy, and a professor of Yale Law School) on the Delaware & Hudson Railroad to the effect that the Adjustment Board provisions of the 1926 Railway Labor Act should be made mandatory (p. 16). In the following passage he praised labor for conceding the right to strike over grievances in exchange for the Adjustment Board machinery specified in Section 3 First (p. 17):

> "The willingness of the employees to agree to such a provision is, in my judgment, a very important concession and one of which full advantage should be taken in the public interest. I regard it as, perhaps, the most important part of the bill."

He regarded Section 3 First as the most important part of the bill because it was designed to provide a substitute for strikes over grievances.

Consonant only with the theory that Section 3 First banned strikes over grievances, is the inclusion of a new proviso limiting the scope of injunctions and protecting in-

dividual, as distinguished from collective, action. This proviso (Section 2, Tenth) reads:

> "Provided, That nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent."

As Mr. Eastman stated concerning this proviso (at p. 24):

> "What is now in the bill goes a little beyond that by speaking of a number of employees collectively, and *the act is intended to prohibit strikes under certain circumstances,* for example, the 60 days during which the fact-finding board is to act." (Emphasis supplied.)

He criticized the railroads' proposed amendments to the adjustment provisions of the 1926 Railway Labor Act because they would not permit a court to "find a firm basis for an injunction" (at p. 153).

In closing his testimony before the Senate Committee, Mr. Eastman described the proposed Adjustment Board as "the final arbiter" (at p. 154).

At the Senate Committee hearings the unions, including the present petitioners, were again represented by Mr. Harrison of the Clerks.

At page 27 of the Senate Hearings, Mr. Harrison introduced himself as follows:

> "My name is George M. Harrison, Cincinnati, Ohio, president of the Brotherhood of Railway Clerks. I appear here as the chairman of the legislative committee of the Railway Labor Executives Association, speak-

ing for the 21 standard railway labor organizations, the list of which I file with the reporter.

"The Chairman [Senator Dill]. It will be printed at this point in the record.

"(The list referred to above is as follows:)

"* * * Brotherhood of Railroad Trainmen."

Mr. Harrison then went through the proposed amendments, making clear that labor supported them, except where he offered changes.

Mr. Harrison testified (at p. 31):

"Then the machinery [of Section 3 First (i)] provides that these controversies [grievances] will be handled in conference in the usual manner, hoping that they will be settled between the parties at home. If they cannot be settled, then they go to this board."

At page 33 Mr. Harrison said:

"Grievances are instituted against railroad officers' actions, and we are willing to take our chances with this national board because we believe, out of our experience, that the national board is the best and most efficient method of getting a determination of these many controversies that arise on these railroads between the officers and the employees."

The following colloquy took place between Senator Dill, chairman of the Senate Committee on Interstate Commerce, and Mr. Harrison (Senate Hearings, p. 34):

"The Chairman. Do you have regional boards also?

"Mr. Harrison. No, sir. The situation is this, Senator: The bill provides in the first instance for the setting up of a national board. Now, we say to the parties: 'You don't need to use this national board if you can't [can] agree with your men back home to set up a [system] board in lieu of that national board.'

"The Chairman. That is a system board?

"Mr. Harrison. A system board, or a regional board, or a group board, 'If you do set it up, then you are exempt from the national board.'

* * * * *

"The Chairman. I just want to get this clear. Then the local and regional of [or] the system board[s] are voluntary?

"Mr. Harrison. They are voluntary.

"The Chairman. And if either party refuses, there is no way to compel them [the setting up of local, regional, or system boards], and that matter would *necessarily* go to the National Board?

"Mr. Harrison. That is right. * * *"

(Emphasis supplied.)

At page 35 of the Senate Hearings, Mr. Harrison discussed the proposed amendments in Section 3 First:

"These railway labor organizations have always opposed *compulsory determination* of their controversies. * * * we are now ready to concede that we can risk having our grievances go to a board and get them determined, and that is a contribution that these organizations are willing to make.

"I just want to tie this tail on to that kite—if I may express it that way—that if we are going to get a hodgepodge arrangement by law, rather than what is suggested by this bill, then we don't want to give up that *right*, because we only give up the *right* because we feel that we will get a measure of justice by this machinery that we suggest here." (Emphasis supplied.)

In this passage, Mr. Harrison stated that railroad labor organizations were giving up the right to strike over grievances in return for the 1934 Adjustment Board machinery,

which makes awards of the Adjustment Board judicially enforceable against carriers (Section 3 First (p)).

Mr. Harrison proposed the present form of Section 3 Second with its provision for agreed-upon system boards of adjustment and for election by either party to return to the jurisdiction of the Adjustment Board if dissatisfied with a system board. Mr. Eastman's version had not contained this. Mr. Harrison explained (at p. 38):

> "That amendment [Section 3 Second] is designed to permit freedom of the parties to set up either kind of this machinery which we designate [system, group or regional boards of adjustment], *if* they do not want to go to the national board [the Adjustment Board] with their grievances." (Emphasis supplied.)

Thus Mr. Harrison was reiterating that grievances must be resolved by the Adjustment Board unless the parties agree to substitute system, group, or regional boards.

Mr. Harrison also filed a supplemental statement with the Senate Committee at pages 162-168 of the Senate Hearings. This statement mentioned the opposition to the Adjustment Board as follows (at p. 167):

> "Brought face to face, finally, with the prospect of *compulsory settlement* of grievance disputes, railway managements have urged upon the committee the desirability of regional boards of adjustment instead of a national board." (Emphasis supplied.)

Louis R. Gwyn of the Railway Express Agency agreed that the bill provided for "compulsory arbitration" by the Adjustment Board (p. 110).

At these same Senate Hearings the railroads were represented by Martin W. Clement, then vice president of the Pennsylvania Railroad Co., and appearing as chairman of the Railway Labor Act committee of all the railroads.

At page 67, speaking of grievances, Mr. Clement said:

> "Men and management are agreed that what they want is compulsory, prompt, and equitable settlement of disputes."

At page 69 Mr. Clement said, with respect to adjustment boards:

> "When men and management sat down 8 years ago, neither side was willing to write into that [1926] act compulsion. We have experienced the act for 8 years, and both sides are now willing to sit down together and write in compulsion. * * *"

Mr. Clement executed an uncontroverted affidavit (R. 22-23) which was attached to the plaintiffs' motion for preliminary injunction in this case. This affidavit shows that Mr. Clement became very familiar with the 1934 legislation. It also shows that he conferred frequently with representatives of labor and government concerning this legislation. Mr. Clement then states (R. 22-23):

> "6. Under that legislation, when employees and carriers fail to reach an adjustment of such disputes [over grievances or the interpretation of collective bargaining agreements] and wish to have them settled, the disputes must be referred to the National Railroad Adjustment Board for decision pursuant to Section 3 First (i) of the Railway Labor Act.
>
> "7. In order to avoid interruptions to commerce, the Railway Labor Act, as amended in 1934, established the National Railroad Adjustment Board to decide such disputes and prohibited strikes over them. Congress substituted administrative processes for strikes in this area."

2. *Committee Reports.*

The Senate and House committee reports accompanying the 1934 Railway Labor bill confirm the compulsory nature of the Adjustment Board. The Senate Report, which was

entitled "Board To Settle Disputes Between Carriers And Their Employees," stated that the bill makes "several far-reaching and important changes in the operation of the Adjustment Board to settle grievances • • •. The most important change in the bill is the creation of what is termed the 'National Adjustment Board.'" Then the Senate Report stated (emphasis supplied):

> "Both representatives of the carriers and of the employees agree that the setting up of boards for the settlement of disputes should be made *compulsory*, when necessary. Representatives of the carriers proposed that the setting up of regional boards be made *compulsory;* representatives of most of the employees insisted that the setting up of the National Board of Adjustment with four divisions be made *compulsory*.
>
> • • • • •
>
> "The ideal situation would be to have disputes and grievances settled by the men and management on the several properties without any recourse to adjudication by an outside tribunal. Some of those advocating this legislation believe the fact that here is a *compulsory* board to which grievances may be taken will greatly increase the settlement of disputes by voluntary adjustment boards between the employees and the railroads." (Senate Report No. 1065 (73d Cong. 2d Sess.) pp. 1-2.)

The House Report stated (emphasis supplied):

> "The purposes of this bill are:
>
> • • • • •
>
> "3. To provide for the prompt and orderly settlement of all disputes growing out of grievances and out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, *so as to avoid any interruption of commerce* or of the proper operation of any carrier engaged therein.
>
> • • • • •

"Analysis Of The Bill

• • • • • •

"(Section 3)

"7. The second major purpose of the bill is to provide sufficient and effective means for the settlement of minor disputes known as 'grievances,' which develop from the interpretation and/or application of the contracts between the labor unions and the carriers, fixing wages and working conditions. The present Railway Labor Act provides for the establishment of boards of adjustment by agreement. In many instances, however, the carriers and the employees have been unable to reach agreements to establish such boards. • • •

"Many thousands of these disputes have been considered by boards established under the Railway Labor Act; but the boards have been unable to reach a majority decision, and so the proceedings have been deadlocked. *These unadjusted disputes have become so numerous that on several occasions the employees have resorted to the issuance of strike ballots* and threatened to interrupt interstate commerce in order to secure an adjustment. This has made it necessary for the President of the United States to intervene and establish an emergency board to investigate the controversies. *This condition should be corrected in the interest of industrial peace and of uninterrupted transportation service.* This bill, therefore, provides for the establishment of a national board of adjustment to which these disputes may be submitted if they shall not have been adjusted in conference between the parties." (House Report No. 1944 (73d Cong. 2d Sess.) pp. 1-3)

The House Report also stated (at p. 4):

"*If* such voluntary machinery [system boards] should be established, then the parties are exempt from the jurisdiction of this National [Railroad Adjustment] Board." (Emphasis supplied.)

3. *Congressional Debates.*

There was little discussion of the 1934 Act on the floor of either House of Congress. The bill was considered at the close of a busy session and was presented as urgent legislation which the President wanted badly.

In the Senate the proponents of the Act introduced and relied upon an explanatory letter from the Secretary of Labor and Commissioner Eastman (the principal author of the amendments) to President Roosevelt which described the Adjustment Board amendments as designed to "provide for compulsory adjustment of individual grievances" and to stop "strike threats" over grievances (78 Cong. Rec. 12375; see *supra*, p. 26).

Senator Dill, who was in charge of the Railway Labor bill in the Senate, stated (78 Cong. Rec. 12083):

> "I am asking to take up proposed legislation which will take charge of the situation so far as the railroad laboring men are concerned. *There is no legislation on the statute books today to prevent a great railroad strike* or to bring about settlement of their disputes.
>
> "The bill has in it provisions which *the railroad employees of the country and their organizations* are backing. They *have agreed to submit to compulsory arbitration of their* [*grievance*] *disputes.* That is a new thing in the labor world. That is something which has not been secured in any prior labor legislation that has been proposed." (Emphasis supplied.)

In the House, Representative Crosser, the House manager, stated (78 Cong. Rec. 11714):

> "The bill when enacted into law will do much to establish industrial peace in this country. *It provides for an appeal to reason rather than to force.* It gives every man employed by railroads an opportunity to be heard

> by an impartial tribunal [the Adjustment Board]. It will set a precedent for labor of every kind in the United States for the establishment of the correct method to be pursued for the establishment of peace in industry." (Emphasis supplied.)

In opposing the bill, Representative Merritt stated (78 Cong. Rec. 11714):

> "*This bill* violates to a very considerable extent the underlying principles of that [1926 Railway Labor] bill, because it *involves a certain amount of force and coercion* which does not tend to peace." (Emphasis supplied.)

In support of the bill, Representative Martin stated (78 Cong. Rec. 11718):

> "It will create instrumentalities for a peaceful adjustment of disputes in the railway service, and Congress may go home with the knowledge that it has done its full duty to insure peace in the railway world."

Representative Rayburn stated (78 Cong. Rec. 11720):

> "Mr. Speaker, when strikes are threatened, and when many of them are going on, I trust that we may keep peace and harmony in the great transportation industry. I believe that this bill will do as much as or more than anything that has been proposed to bring about that happy circumstance. Therefore, I trust that there will not be a vote in the House against this bill that I believe is fair to both employer and employee."

The foregoing excerpts from the debates in Congress show that the legislators understood from the sponsors that the 1934 Act provided for the compulsory adjustment of grievances, and voted in the light of that understanding.

In 1934 the unions, having found the enforcement of grievances by strike to be too burdensome, asked Congress

to replace the prior chaos with orderly procedure. Congress complied by creating the mandatory Adjustment Board procedure, a procedure the unions had sought since their World War I experience with adjustment boards during federal management of the railroads. After 20 years of understanding that the Adjustment Board procedure is mandatory, the Trainmen now insist that they can disregard it at their will.

4. *Petitioners' Statement of the 1934 Legislative History Is Misleading.*

Petitioners' doubts as to their present interpretation of the Railway Labor Act are reflected in the paucity of the legislative history quoted in their brief. For example, only the earlier statements of Congressmen Pettengill and Cooper are quoted before the discussion of injunctions against strikes over grievances really got under way and before the proviso in Section 2 Tenth was explained to the House Committee. Moreover, the highly significant explanations by Commissioner Eastman and his legal advisor, Mr. Carmalt, have been vitally truncated. It is significant that the brief of the *amicus* Brotherhood completely omits Mr. Carmalt's discussions with respect to enjoining strikes over grievances. It is necessary to refer to respondents' brief for a complete understanding of the pertinent legislative history. Although *amicus* Brotherhood claims that Commissioner Eastman was of the view that no authorization for injunctions against strikes over grievances should be included in the 1934 Railway Labor Act (Br. 5), the Brotherhood neglects to add that this was because Commissioner Eastman's legal advisor advised that no specific authorizations for injunctions would be necessary. (See *supra*, pp. 32-33.) The hearings also reveal that Commissioner Eastman was familiar with *Texas & N. O. R. Co.* v.

Brotherhood of R. & S. Clerks, 281 U. S. 548, holding that the Railway Labor Act should be enforced through the issuance of injunctions despite the absence of statutory enforcement provisions (see Senate Hearings, pp. 147-148; House Hearings, pp. 24-25). It must be noted that Commissioner Eastman's final remarks on the problem were that Section 3 First (i) does "provide for compulsory adjustment of individual grievances" in order to avoid strikes (78 Cong. Rec. 12375).

Besides ignoring the salient testimony of Mr. Eastman and Mr. Carmalt, petitioners quote only one sentence of George Harrison, the legislative representative of petitioners and the other 20 standard unions at the 1934 Hearings. The reason, of course, is that petitioners wish to shy away from Mr. Harrison's statements that the right to strike was being given up in return for compulsory Adjustment Board machinery provided in the 1934 Act. This Court has already recognized that great weight must be given to Mr. Harrison's views (*Elgin, Joliet & Eastern Railroad* v. *Burley*, 325 U. S. 711, 718, note 24). This is especially so when they coincide with Commissioner Eastman's views (cf. Petitioners' Br. 16).

Since the clear legislative history shows that Congress was enacting compulsory arbitration of grievances, certainly Congress would not simultaneously intend to make its enactment unenforceable by virtue of the Norris-La Guardia Act. In this connection, it should be observed that petitioners have been unable to refer to any legislative history to show that Congress intended the Norris-La Guardia Act to apply to this situation. They can find no such legislative history because Congress would surely not intend to hamstring completely the 1934 Adjustment Board provisions by the 1932 statute.

5. *1950 Legislative History Is Entirely Irrelevant in Interpreting 1934 Railway Labor Act.*

A great deal of the two *amici curiae* briefs on petitioners' side is devoted to the 1950 legislative history of a certain bill in Congress. However, petitioners have abandoned this point, evidently bowing to the traditional rule of statutory construction that subsequent legislative history should not be used in construing prior statutes. As this Court stated in *United States* v. *Rumely*, 345 U.S. 41, 48:

> "What was said in the debate on August 30, 1950, after the controversy had arisen regarding the scope of the resolution of August 12, 1949, had the usual infirmity of *post litem motam*, self-serving declarations."

This familiar rule has been frequently applied by this Court. Other recent examples include *Fogarty* v. *United States*, 340 U.S. 8, 13-14, *Packard Motor Car Co.* v. *National Labor Relations Board*, 330 U.S. 485, 492, and *United States* v. *United Mine Workers*, 330 U.S. 258, 281-282. Therefore, none of the 1950 legislative statements relied upon by these *amici curiae* should be considered in construing the 1934 Railway Labor Act.

Even if the 1950 proposed amendment could be considered, it does not help petitioners' case. The principal purpose of the Donnell bill was to prohibit strikes over the "major disputes". The respondents have not contended that the Railway Labor Act prohibits strikes over the "major disputes" after the procedures of the Act have been exhausted. Insofar as preventing strikes over grievances is concerned, the Senate Committee apparently concluded that no clarifying amendment was necessary since the 1934 Act already provided compulsory Adjustment Board machinery to handle the "minor disputes". The

Donnell bill died in Committee not only because it prohibited strikes over major disputes, but also because it permitted any interested person to bring an action to review a decision of the Adjustment Board.

In addition to the text of the bill, the Senate Report on the Donnell bill states only as follows:

> "The Committee on Labor and Public Welfare, to whom was referred the bill (S. 3463) to amend the Railway Labor Act, as amended, so as to prevent interference with the movement of interstate commerce, and for other purposes, having considered the same, report unfavorably thereon, with amendments, and recommend that the bill, as amended, do not pass." (S. Rep. No. 2445, 81st Cong., 2d sess.)

As stated in *Trailmobile Co.* v. *Whirls,* 331 U.S. 41, 61, "The interpretation of statutes cannot safely be made to rest upon mute legislative maneuvers." Similarly, in *Wong Yang Sung* v. *McGrath,* 339 U.S. 33, 47-48, the Court refused to draw any inference from a bill which had been reported favorably by Committees of both Houses but which received no further action before adjournment. The *Wong Yang Sung* rule applies *a fortiori* here, for the only Committee that considered the Donnell Bill reported it unfavorably. Cf. *Order of Railway Conductors* v. *Swan,* 329 U.S. 520, 529.

To the extent that the 1950 bill indicated a fear that the intent and spirit of the Railway Labor Act were being ignored, such "abortive attempt at clarification" should not be allowed to affect the interpretation of the earlier statute. *City of New York* v. *Saper,* 336 U.S. 328, 340.

The briefs of *amici* Brotherhood and RLEA cite the statements of many witnesses on the Donnell bill. Most of the railroad witnesses stated that such strikes are contrary

to the scheme of the Railway Labor Act. One railroad witness did indicate his belief, erroneous we believe, that the present Railway Labor Act does not forbid such strikes. The other witnesses did not say one way or the other because that question was not before the hearing. These spokesmen really did not attempt to restate the law but instead were advancing contentions in favor of another statute.

Mr. Harrison testified in opposition to judicial review of Adjustment Board decisions. In the course of his testimony he made one remark which implies that a strike of the kind in issue here would be legal, although this was not the subject of his testimony, and therefore we do not know if he really meant such implication. Such implication is at war with what he told Congress and what he told his fellow A. F. of L. members in 1934 (see *supra* pp. 27, 33-34, 37-40) and must be discounted. Contemporaneous testimony is of course far more trustworthy (*United States* v. *Rumely*, 345 U.S. 41, 48).

Even in the 1950 hearings on the Donnell bill, president William Green of the American Federation of Labor testified:

> "Except for disputes over the interpretation and application of existing agreements, *which must be adjudicated by the Adjustment Board*, the [Donnell] bill applies to all disputes of whatever nature in the railroad industry, and regardless of how few employees may be involved, and regardless of whether a substantial or, indeed, any interruption to interstate transportation is threatened, and regardless of whether any emergency situation imperiling public health and safety has been created." (Hearings on S. 3463 before subcommittee of Senate Committee on Labor and Public Welfare, 81st Cong., 2d sess., p. 383.) (Emphasis supplied.)

C. This Court Has Acted for Years on the Understanding That the Adjustment Board Procedure Is Mandatory.

In *Elgin J. & E. R. Co.* v. *Burley*, 325 U. S. 711, the Court adverted to the distinct differences in the statutory treatment of the "major disputes," which concern the making of collective agreements, and the "minor disputes," *i.e.*, grievances. The Court pointed out that Congress has left the settlement of major disputes "entirely to the processes of noncompulsory adjustment" (325 U. S. at p. 724). In contrast, the Adjustment Board was established for the compulsory determination of grievances when not settled by agreement, as shown in the following passage from the *Burley* case (325 U. S. at pp. 725-728):

> "The course prescribed [by the Railway Labor Act] for the settlement of grievances is very different beyond the initial stage. Thereafter the Act does not leave the parties wholly free, at their own will, to agree or not to agree. On the contrary, one of the main purposes of the 1934 amendments was to provide a more effective process of settlement.
>
> "Prior to 1934 the parties were free at all times to go to court to settle these disputes. Notwithstanding the contrary intent of the 1926 Act, each also had the power, if not the right, to defeat the intended settlement of grievances by declining to join in creating the local boards of adjustment provided for by that Act. They exercised this power to the limit. Deadlock became the common practice, making decision impossible. The result was a complete breakdown in the practical working of the machinery. Grievances accumulated and stagnated until the mass assumed the proportions of a major dispute. *Several organizations took strike ballots and thus threatened to interrupt traffic, a factor which among others induced the Coordinator of Transportation to become the principal author and advocate of the amendments.* The sponsor in the House insisted

that Congress act upon them before adjournment for fear that if no action were taken a railroad crisis might take place. The old Mediation Board was helpless. To break this log jam, and at the same time to get grievances out of the way of the settling of major disputes through the functioning of the Mediation Board, the Adjustment Board was created and given power to decide them.

"The procedure adopted is not one of mediation and conciliation only, like that provided for major disputes under the auspices of the Mediation Board. Another tribunal of very different character is established with 'jurisdiction' to determine grievances and make awards concerning them. Each party to the dispute may submit it for decision, *whether or not the other is willing*, provided he has himself discharged the initial duty of negotiation. § 3 First (i). Rights of notice, hearing, and participation or representation are given. § 3 First (j). In some instances judicial review and enforcement of awards are expressly provided or are contemplated. § 3 First (p); cf. § 3 First (m). When this is not done, the Act purports to make the Board's decisions 'final and binding.' § 3 First (m).

"*The procedure is in terms and purpose very different from the preexisting system of local boards. That system was in fact and effect nothing more than one for what respondents call 'voluntary arbitration.'* No dispute could be settled unless submitted by agreement of all parties. When one was submitted, deadlock was common and there was no way of escape. *The Adjustment Board was created* to remove the settlement of grievances from this stagnating process and bring them within a general and inclusive plan of decision. The aim was not to dispense with agreement. It was *to add decision where agreement fails and thus to safeguard the public* as well as private interests against the harmful effects of the preexisting scheme." (Emphasis supplied; footnotes omitted.)

In supporting the foregoing passage from the Court's opinion, Justice Rutledge underscored the testimony of Mr. Harrison, the Trainmen's representative, that the Adjustment Board was to provide "compulsory determination" of grievances and that, in return for that legislation, labor was giving up the "right" to strike over grievances (325 U. S. at p. 728, note 24).

In the *Burley* case, the Court stressed the necessity of exhausting the possibility of agreement under the Railway Labor Act. The Court stated (Note 12, pp. 721-722):

> "Thus, one of the statute's primary commands, judicially enforceable, is found in the repeated declaration of a duty upon all parties to a dispute to negotiate for its settlement. See note 26 [referring to Section 3 First (i) and other Sections of the Railway Labor Act]; *Virginian R. Co.* v. *System Federation*, 300 U. S. 515; cf. *Switchmen's Union* v. *National Mediation Board*, 320 U. S. 297, 300, 320; *General Committee* v. *M.-K.-T. R. Co.*, 320 U. S. 323, 331, 334. This duty is not merely perfunctory. Good faith exhaustion of the possibility of agreement is required to fulfill it. Cf. *Virginian R. Co.* v. *System Federation, supra*, at 548, 550; *Trainmen* v. *Toledo, P. & W. R. Co.*, 321 U. S. 50, 56 ff. At successive stages of the statutory procedure other duties are imposed. Cf. §§ 5 First (b), 6, 10."

Even as to the major disputes, the Court stated in the *Burley* case (325 U. S. at p. 725):

> "The parties are required to submit to the successive procedures designed to induce agreement. § 5 First (b). But compulsions go only to insure that those procedures are exhausted before resort can be had to self-help."

A fortiori, in the case of this minor dispute, the Act requires the parties "to submit to the successive procedures

designed to induce agreement" contained in Section 3 First. If under the *Burley* case resort cannot be had to self-help in major disputes until the procedures of the Act are exhausted, surely there can be no resort to self-help in this minor dispute until the procedures of Section 3 First have been exhausted.

One serious Railway Labor Act problem considered, developed, and worked out by this Court has been whether an aggrieved employee may take his grievance to court rather than to the Board. The latest solution of this analogous problem has been that the courts are closed to an aggrieved employee except where he elects to treat his employment as terminated and to rely on his common law rights. Even there, this Court has held that such a former employee may have to submit to the Adjustment Board procedure. *Transcontinental Air* v. *Koppal*, 345 U. S. 653. The *Koppal* decision assumed that one who does not elect to come out from under the Railway Labor Act must refer to the Adjustment Board any grievances which he wished to progress further. Surely there was no intention of closing the peaceful law of the courts and promoting resort to the "law of the jungle."

In related opinions, the Court has relied on the words of the statute that either party may resort to the Board to prevent the opposing party from litigating the grievances. *Slocum* v. *Delaware, L. & W. R. Co.*, 339 U. S. 239; *Order of R. Conductors* v. *Southern R. Co.*, 339 U. S. 255. Here again, there surely was no intention of closing the courts in favor of industrial warfare. This pair of cases held that the Adjustment Board procedure was exclusive and promoted the use of that procedure by preventing attempts to bypass it.

In *Order of R. Conductors* v. *Southern R. Co.*, 339 U. S.

255, 256-257, the Court referred to the language of Section 3 First (i) as conferring a "privilege" on either party to the dispute to have grievances settled by the Adjustment Board. Here the River Road is endeavoring to exercise that privilege.

The Adjustment Board procedures established in the Railway Labor Act of 1934 were also described in *Slocum* v. *Delaware, L. & W. R. Co.*, 339 U. S. 239. There the Court stated (at p. 242):

> "The first declared purpose of the Railway Labor Act is 'to avoid any interruption to commerce or to the operation of any carrier engaged therein.' 48 Stat. 1186 (§ 2), 45 U.S.C. § 151a. This purpose extends both to disputes concerning the making of collective agreements and to grievances arising under existing agreements. See *Elgin, J. & E. R. Co.* v. *Burley*, 325 U. S. 711, 722. The plan of the Act is to provide administrative methods for settling disputes before they reach acute stages that might be provocative of strikes. Carriers are therefore required to negotiate with bargaining representatives of the employees. *Virginian R. Co.* v. *Federation*, 300 U. S. 515, 547, 548. *The Act also sets up machinery for* conciliation, mediation, arbitration and *adjustment of disputes, to be invoked if negotiations fail.*
>
> "In this case the dispute concerned interpretation of an existing bargaining agreement. Its settlement would have prospective as well as retrospective importance to both the railroad and its employees, since the interpretation accepted would govern future relations of those parties. *This type of grievance has long been considered a potent cause of friction leading to strikes. It was to prevent such friction that the 1926 Act provided for creation of various Adjustment Boards by voluntary agreements between carriers and workers.* 44 Stat. 578. *But this voluntary machinery proved unsatisfactory*, and in 1934 Congress, with the support

of both unions and railroads, passed an amendment which directly created a national Adjustment Board composed of representatives of railroads and unions. 48 Stat. 1189-1193. The Act thus represents a considered effort on the part of Congress to provide effective and desirable administrative remedies for adjustment of railroad-employee disputes growing out of the interpretation of existing agreements. The Adjustment Board is well equipped to exercise its congressionally imposed functions. Its members understand railroad problems and speak the railroad jargon." (Emphasis supplied.)

A strike by the defendants over these grievances pending in the Adjustment Board would disregard the entire plan of the Act to prevent strikes through the establishment of a compulsory Adjustment Board.

In *Transcontinental Air* v. *Koppal,* 345 U. S. 653, 660, the Court again emphasized that the Railway Labor Act "provides a procedure [the Adjustment Board] for handling grievances so as to avoid litigation and interruptions of service * * *."

The above instances show that this Court has agreed with the belief of the Congressmen who passed the Railway Labor Act, the draftsmen of the Act, and the railroadmen and union leaders who have lived under the Act. Only in recent years have a few men, almost all of whom are concentrated in the four operating unions, purporting to speak for approximately 10% of the union members in the railroad industry, practiced otherwise. For the first decade after the enactment of the Adjustment Board machinery, there were no strikes over grievances, showing that the unions understood the law to be as construed by the Court below. Actually neither the petitioners nor their *amici* have pointed to any strikes over grievances from 1934 to 1949, which is a fair indication that all concerned considered

such strikes to be illegal over the impressive span of 15 years. That is why litigation was unnecessary (cf. RLEA Br. 23; B.L.E. Br. 13). Even after 1949, the number of such strikes per year has been limited.[4]

The reliance by *amicus* Railway Labor Executives Association (Br. 10-11) on *General Committee* v. *Missouri-Kansas-Texas R. Co.*, 320 U. S. 323, is misplaced, for the discussion therein was directed at the major disputes.

Amicus Brotherhood relies on certain dicta from *Washington Terminal Co.* v. *Boswell*, 124 F. 2d 235, 247 (C.A.D.C., 1941) and *Moore* v. *Illinois Central R. Co.*, 312 U. S. 630 (Br. 6-7). The *Boswell* opinion was written by Justice Rutledge in 1941. A few years later he wrote the exhaustive opinion in the *Burley* case which is at war with the *Boswell* dictum. Furthermore, the defendants have failed to quote the important statement in the *Boswell* opinion that "the question [whether a strike would be unlawful] need not now be decided" (124 F. 2d at p. 247). The dictum from the *Moore* case[5] was directed at the 1926 Act and was not followed by its author, Justice Black, when dealing with the entirely different 1934 adjustment provisions in *Order of R. Conductors* v. *Southern R. Co.*, 339 U. S. 255, and *Slocum* v. *Delaware, L. & W. R. Co.*, 339 U. S. 239; see also *Elgin, J. & E. R. Co.* v. *Burley*, 325 U. S. 711, and *Transcontinental Air* v. *Koppal*, 345 U. S. 653.

Petitioners' brief refers *passim* to an injunction as a Draconian remedy while disregarding the fact that the Adjustment Board, the instrument chosen by Congress to

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4. See the Annual Reports of the National Mediation Board for 1949-1955.

5. Justice Black's dictum in the *Moore* case (312 U. S. at p. 636) relied only upon H. Rep. No. 328 (69th Cong., 1st sess.) p. 4. That Report dealt with the 1926 Railway Labor Act, and the Adjustment Board provisions were of course voluntary under that Act (see *supra*, p. 19).

settle grievances, remains open for a fair consideration of the grievances that reach it. It should be noted that only five to ten per cent of local grievances ever reach the General Committees on the carriers (*amicus* Brotherhood's Br. 36) and of course not all these go as far as the Adjustment Board before they are settled.

The petitioners complained below of the tenor of the River Road's submissions to the Adjustment Board. It should be noted that the petitioners are entitled to file their own submissions there. Proceedings before the Adjustment Board need take no longer than judicial proceedings, claims for reinstatement are given expedited treatment by the Board, and back pay is generally awarded when the Board sustains claims. Therefore, the procedures chosen by Congress for the handling of grievances do not merit the tendered criticism. Moreover, it was the petitioners who refused to accept the proposals of the Mediation Board even though the River Road was agreeable to those proposals. If the petitioners had agreed to the proposals of that neutral Board, none of the delays of which there is now complaint would have occurred.

The argument of the *amicus* Brotherhood that the decision below would destroy the ability of employees to prosecute their grievances before the Adjustment Board (Br. 41) is entirely fallacious. This argument completely overlooks the even membership upon the Board of representatives of the unions and of the carriers. It also overlooks the record of the Board in deciding most cases in favor of the employees. One study found that approximately two-thirds of the decisions had been in favor of labor, and that the percentage would have been higher except that the unions deliberately arranged to present a certain number of "sure losers" so as to adjust the ratio. Northrup and Kahn, Railroad Grievance Machinery: A

Critical Analysis (1952) 5 Industrial & Labor Relations Rev. 365, 381.

It is untrue that the decision below will impede rather than promote the settlement of grievance disputes, as urged by the *amicus* Brotherhood (Br. 5). Modern thought approves the peaceful adjudication application of already agreed-upon principles. This is an area where experience in labor arbitration and adjustment should be applied, as Congress intended. Under the decision below, the Adjustment Board will be left free to decide these grievances. If its award should be in favor of petitioners, past history teaches that the award would almost certainly be honored (see *amicus* Brotherhood's Br. 38). If not, Congress has given petitioners the statutory remedy of an enforcement suit, with very limited review permitted of the correctness of the award. The *amicus* Brotherhood's professed fear of the Adjustment Board (expressed in Br. 5-6) rings hollow indeed, in view of labor's great success before that Board, which was created by Congress upon the insistence of the railroad unions.

We know of no railroad policy to deny grievances on the property so that they will have to be determined by the Adjustment Board (cf. *amicus* Brotherhood's Br. 39). Moreover, employees cannot gainsay that their treatment by the Adjustment Board has been eminently fair. The good record of carriers' compliance with Adjustment Board awards is attested in the brief of *amicus* Brotherhood (at p. 38). Any railroad management which would follow a policy of denying grievances to force them before the Adjustment Board would be completely without any sense of economics. As already noted, the Adjustment Board regularly awards back pay. Each day's delay may mean to the railroad as much as several thousand dollars.

It cannot be argued that the Adjustment Board procedure is an expense to the employee. His grievance will ordinarily be presented and processed by his Brotherhood. Indeed, the Labor Members of the Board formerly would not tolerate cases submitted by others. Northrup & Kahn, Railroad Grievance Machinery: A Critical Analysis (1952), 5 Industrial & Labor Rel. Rev. 365; "Railroad Labor Disputes and the National Railroad Adjustment Board," 18 Univ. of Chicago L. Rev. 303 (1951).

Finally as to Part I, respondents repeat to the Court that a decision that the adjustment procedure is not mandatory and exclusive would make nonsense of the 1934 amendments to the Act. Such a holding would say that Congress did nothing significant in enacting the 1934 Adjustment Board amendments. A process to which either side may put a halt at will is not useful and would be completely contrary to the construction adopted in the cases that the Act permits either party to disputes to take grievances to the Adjustment Board even though the other party is not willing. Petitioners seem to believe that, for some unexplicable reason, it is better for everybody to be thrown out of work to enforce the demands of a few rather than for everybody to work while those aggrieved are obtaining redress by orderly process! Their view is that the railroads, the unions, and the courts have all been in error for the past years in considering that grievances processed beyond the railroad property have to be taken to the Adjustment Board (or to system boards). The statute, its judicial construction and its legislative history compel the conclusion that grievances must be settled by the Adjustment Board rather than by strike.

II.

THE NORRIS-LA GUARDIA ACT DOES NOT PREVENT FEDERAL COURTS FROM ENFORCING THE COMMANDS OF THE RAILWAY LABOR ACT.

Part II of petitioners' brief assumes that Congress prohibited strikes over grievances and yet urges that an injunction is not permissible. Congress certainly did not intend the 1934 Act to be an empty gesture, and even petitioners concede that an injunction is the only adequate remedy (Br. 20). Under the decision below, the Adjustment Board remains open to pass upon these grievances, so that there is nothing Draconian about the remedy awarded (cf. Pet. Br. 21).

Not only do the petitioners themselves try to bypass the Adjustment Board, but they go further and try to ignore the Board even after its jurisdiction has been invoked in this case, for these grievances have been filed before the Board, as contemplated by the collective bargaining contract between petitioners and the River Road, and are now pending there.

The district court originally held that it could not save the situation, because it was rendered powerless by the Norris-La Guardia Act. But this Court has certainly made it clear that the Norris-La Guardia Act does not prevent enforcement of the Railway Labor Act. Any other holding would condemn the country to industrial chaos.

There can be no charge that respondents do not deserve equity because they have not done equity. In fact, the River Road not only exhausted every available means of compromise, it made affirmative efforts to go far beyond any of the normal machinery for compromise or arbitration of the 21 grievances here involved. Here it is petitioners

who have failed to exhaust the administrative remedies afforded by the Railway Labor Act. The River Road did not go into court until there was no other conceivable remedy.

Before examining the power of a federal court to act here, one misconception expressed in all of the various briefs filed on the side of the petitioners must be laid to rest. The respondents did not ask the Court to enjoin a strike which they thought was illegal because the strike violated some contract provisions. The respondents went into court to ask for enforcement of the Railway Labor Act. They relied on the statute, and only on the statute. If the Adjustment Board procedure is not mandatory under the 1934 statute, then they do not claim any other reason for an injunction. Therefore, the various citations and quotations from the many cases, such as *Milk Wagon Drivers Union* v. *Lake Valley Farm Products, Inc.*, 311 U.S. 91, are immaterial. Those cases are not challenged in any manner here. Respondents' position is merely that the Norris-LaGuardia Act does not prevent the courts from enforcing the Railway Labor Act.

The injunction here does not impinge on the policies of the Norris-LaGuardia Act. This injunction does not take sides—does not help one group rather than the other. This injunction is not like one against a strike over future contract terms. An injunction there may delay the individual employee's bettering his work conditions or his pay. But a strike here is not for future rights. It is over some grievances growing out of past contracts. Employees are not benefited by a strike over grievances; rather, they are benefited when an individual grievance can be settled without throwing everybody else out of work. It has already been noted that the Adjustment Board regularly awards back pay for well-founded grievances, so that delay is dis-

advantageous to the railroad and does not penalize the employees. An injunction here protects all parties and the public by requiring that these grievances be settled by the administrative body which Congress considers capable of handling the matter.

In the *Central of Georgia* case, Judge Brown's dissent forcefully points out why an injunction against strikes over grievances does not upset any balance between the parties and does preserve the public interest. Thus he stated (229 F. 2d at p. 911):

> "This does not impinge upon the basic policies reflected in the Norris-La Guardia Act or the elemental rights which seem to inhere in the right to strike. A court of equity is not being used, as was so often formerly the case, to upset the balance or imbalance of competing economic forces in order to give one party, rather than the other, weight or advantage in a private controversy between labor and management. Here a court of equity exerts its power to fulfill the predominant public interest in having provocative (but as here otherwise relatively insignificant) controversies determined by the public agency established by law for that very purpose. In this way the equity court, not ranging on the side of one against the other, adheres strictly to the position of impartial enforcement of law—an imposition on each and both of the duty to use freely, and in good faith exhaust, this statutory machinery for the determination of these controversies."

Cf. Mendelsohn, Enforceability of Arbitration Agreements under Taft-Hartley Section 301 (1956), 66 Yale L.J. 167, 183.

As stated by the *amicus* Short Line Association, although behind the Norris-La Guardia Act is the laudable purpose of protecting the legitimate interests and activities of organized labor, behind the Railway Labor Act is the equally basic and fundamental purpose of protecting the

public and other railroad employees against the widespread chaos and hardships that result from application of the "law of the jungle" in labor relations on key transportation systems.

A. If the Federal Courts Cannot Enforce the Railway Labor Act, It is Unenforceable.

The Railway Labor Act does not establish any enforcement agencies, as does the Labor-Management Relations Act (Taft-Hartley) in the industrial labor field. The function of the various bodies established under the Railway Labor Act has already been described. The Mediation Board and the Adjustment Board are not administrative agencies empowered to police the area of their authority. The Mediation Board does not make any decisions and does not enforce anything, and this result was deliberately created by Congress (cf. Senate Hearings, pp. 134-135). The Adjustment Board handles such claims as are submitted to it by one or both parties and does not have a general power of inquisition, as does the National Labor Relations Board. The emergency boards are created for only 30 days and can only investigate. Boards of arbitration exist only if the parties create them by agreement.

As a result, if the courts cannot enforce the pertinent mandatory provisions of the Railway Labor Act, those provisions are unenforceable. In other words, if the federal courts are removed from this field of Railway Labor Act enforcement, there is nothing left to fill the void.

The petitioners and the supporting *amici curiae* in this case seek a result which once before was attained in connection with a railway labor act. Title III of the Transportation Act of 1920 (41 Stat. 456, 469) was a railway labor act. It provided an elaborate system for regulating both grievance procedures and collective bargaining, including a

governmental agency called The Railroad Labor Board. The procedures under that Act were said to be mandatory. But this Court also held that these procedures were not enforceable in court. *Pennsylvania R. Co.* v. *United States Railroad Labor Board,* 261 U. S. 72; *Pennsylvania R. System Federation No. 90* v. *Pennsylvania R. Co.,* 267 U. S. 203. Within a year of the prior decision, Congress was considering new legislation. Eventually railroads and Brotherhoods together presented Congress with a draft that became the Railway Labor Act of 1926. The outstanding point made in all the debates on the various bills that came up after these decisions was that the parties had ceased to follow the Act of 1920 except as it struck their fancy or suited their purposes, and as a result that Act was a dead letter and that Board was for most purposes a nonentity. That result would follow as to the present Act if the position of these petitioners is accepted.

If the decision of the court below is reversed, any pretense of making the Adjustment Board procedure a fair one will be dropped. Common sense will dictate to the Brotherhoods that they submit to the Board only the sure winners and strike over all the other grievance disputes regardless of their merits. If such a reversal is carried to its logical conclusion, it will mean that the railroads also may pick and choose which decisions of the Adjustment Board they will follow. The result will be that Section 3 of the Railway Labor Act has been as effectively vetoed as if President Roosevelt had sent it back to Congress in 1934.

Petitioners rely heavily (Br. 22) on *General Committee* v. *Missouri-Kansas-Texas R. Co.,* 320 U.S. 323, and related "major dispute" cases. These hold that jurisdictional disputes between labor organizations are not justiciable upon the complaint of any party. This follows in line with the same holding under the National Labor Relations Act.

American Federation of Labor v. *National Labor Relations Board*, 308 U.S. 401. They do not answer any question in the present case.

At stake in this case are not only the interests and welfare of the thousands of employees, the businesses and the communities which will be seriously affected by the irresponsible and reckless actions of the small group here concerned, but also the whole structure of peaceful and orderly procedures for the settlement of grievance disputes erected by the 1934 Railway Labor Act, as observed by the *amicus* Short Line Association. If it should be held that the courts cannot enforce those procedures, that will of course cripple the 1934 Act and will contravene its stated purposes "to avoid any interruption to commerce or to the operation of any carrier" and "to provide for the prompt and orderly settlement of all disputes growing out of grievances" (Section 2, 45 U.S.C. § 151a). Unless the judgment below is affirmed, the prescribed duty of railroad employees and carriers "to exert every reasonable effort to * * * settle" grievances (Section 2 First, 45 U.S.C. § 152 First) will become meaningless.

B. This Court Has Held That Federal Courts Have a Duty to Enforce the Mandatory Provisions of the Railway Labor Act.

This Court's first case under the 1934 amendments to the Railway Labor Act, *Virginian R. Co.* v. *System Fed. No. 40*, 300 U. S. 515, considered the defense of the Norris-La Guardia Act. The Act commanded collective bargaining. The argument was made, as it is in this case, that Congress intended by the Norris-La Guardia Act to exclude enforcement of that duty from the jurisdiction of the courts.

However, the Government's brief *amicus curiae* in the *Virginian* case urged that (Br. 106-107):

> "The Norris-La Guardia Act establishes a general rule applicable to the granting of injunctions in cases growing out of labor disputes. The amended Railway Labor Act, subsequently enacted, imposes specific statutory obligations, some of which are enforceable only by injunction. Under such circumstances, it seems clear that Congress would not have intended the operation of a statute passed to deal with a *specific* problem to be impeded by the application of an earlier law of more general application. See *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S., at 571, in which a similar argument was rejected. Cf. *Callahan* v. *United States*, 285 U. S. 515; *Ex parte United States*, 226 U. S. 420, 424; *Rodgers* v. *United States*, 185 U. S. 83, 87-89."

The Government's argument was accepted and it was held that the Act would be unenforceable unless the courts did have the power to enforce it. Mr. Justice Stone concluded for the unanimous Court that the provisions of the Railway Labor Act "render nugatory the earlier and more general provisions of the Norris-La Guardia Act" (300 U. S. at pp. 562-563).

The Court explained (at p. 545):

> "Neither the purposes of the later Act, as amended, nor its provisions when read, as they must be, in the light of our decision in the *Railway Clerks* case, *supra* [281 U. S. 548], lend support to the contention that its enactments, which are mandatory in form and capable of enforcement by judicial process, were intended to be without legal sanction."

In discussing the propriety of equitable relief, the Court said (at p. 552):

> "More is involved than the settlement of a private controversy without appreciable consequences to the public. The peaceable settlement of labor controver-

sies, especially where they may seriously impair the ability of an interstate rail carrier to perform its service to the public, is a matter of public concern. That is testified to by the history of the legislation now before us, the reports of committees of Congress having the proposed legislation in charge, and by our common knowledge. Courts of equity may, and frequently do, go much farther both to give and withhold relief in the furtherance of the public interest than they are accustomed to go when only private interests are involved. * * *. The fact that Congress has indicated its purpose to make negotiation obligatory is in itself a declaration of public interest and policy which should be persuasive in inducing courts to give relief. It is for similar reasons that courts, which traditionally have refused to compel performance of a contract to submit to arbitration * * *, enforce statutes commanding performance of arbitration agreements. * * *"

This conclusion followed directly from the holding under the 1926 Act in *Texas & N. O. R. Co.* v. *Brotherhood of Clerks,* 281 U. S. 548. There it was argued that Section 20 of the Clayton Act (a predecessor of the Norris-La Guardia Act) prevented an injunction. The Clayton Act was found to be inapplicable for other reasons, but Chief Justice Hughes, writing for a unanimous Court, also stated as to it (at p. 571):

> "It may be doubted whether Section 20 can be regarded as limiting the authority of the court to restrain the violation of an explicit provision of an act of Congress, where an injunction would otherwise be the proper remedy."

Earlier in that opinion, Chief Justice Hughes had explained why this Court found that courts had a duty to enforce the provisions of this statute, even though no specific enforcement procedures had been spelled out therein. The opinion said (at p. 569):

"As the prohibition was appropriate to the aim of Congress, and is capable of enforcement, the conclusion must be that enforcement was contemplated.

"The absence of penalty is not controlling. The creation of a legal right by language suitable to that end does not require for its effectiveness the imposition of statutory penalties. Many rights are enforced for which no statutory penalties are provided. In the case of the statute in question, there is an absence of penalty, in the sense of specially prescribed punishment, with respect to the arbitral awards and the prohibition of change in conditions pending the investigation and report of an emergency board, but in each instance a legal obligation is created and the statutory requirements are susceptible of enforcement by proceedings appropriate to each. The same is true of the prohibition of interference or coercion in connection with the choice of representatives. The right is created and the remedy exists."

The draftsman of the 1934 Railway Labor Act was very familiar with this opinion (see *supra*, pp. 46-47).

Cases subsequent to these cases have followed their reasoning. In fact, speaking, *inter alia*, of the Adjustment Board provisions, the Court stated in the *Burley* case (325 U. S. 711, 721-722, note 12):

"Thus, one of the statute's primary commands, *judicially enforceable*, is found in the repeated declaration of a duty upon all parties to a dispute to negotiate for its settlement. See note 26 [referring to Section 3 First (i) and other Sections of the Railway Labor Act] * * *." [Emphasis supplied.]

The most recent discussion here on the subject of enforcing the Railway Labor Act involves the culmination of the long history of discrimination against Negroes by petitioner Brotherhood of Railroad Trainmen, and a few other unions.

Brotherhood of Railroad Trainmen v. *Howard*, 343 U. S. 768.[6] In that case the Brotherhood of Railroad Trainmen by strike threats had forced the Missouri-Pacific Railroad to bar Negroes from certain duties. The court of appeals had properly remedied this situation. In this Court the Brotherhood of Railroad Trainmen particularly relied upon the Norris-La Guardia Act because the effect of the judgment below was to enjoin a strike. This Court followed its tradition of insisting that the unions honor their duty under the Railway Labor Act to represent all members of their own organization, not just a favored few. The members of this Court did split over whether the union had the duty of representing all members of the craft regardless of their membership in the union, the majority holding that it did. But there was no split upon the continuing adherence to the Court's earlier position that "the District Court has jurisdiction and power to issue necessary injunctive orders notwithstanding the provisions of the Norris-La Guardia Act" (343 U. S. at p. 774). The district court was ordered to remedy the situation and was told to award appropriate relief, which necessarily would have the effect of the enjoining of further strike threats.

There are other similar decisions by this Court. They all are based on the reasoning that it would be senseless for Congress to require certain action in the 1934 amendments to the Railway Labor Act if Congress meant the earlier provisions of the Norris-La Guardia Act to prevent the federal courts from enforcing the mandatory provisions of the later Act.

Petitioners and their *amici* try to distinguish those cases

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6. See also *Rolfes* v. *Dwellingham*, 198 F. 2d 591 (C.A. 8, 1952); *Brotherhood of R. Trainmen* v. *Templeton*, 181 F. 2d 527 (C.A. 8, 1950), certiorari denied, 340 U. S. 832; *Hunter* v. *Atchison, T. & S. F. R. Co.*, 171 F. 2d 594 (C.A. 7, 1948), certiorari denied 337 U. S. 916.

by saying that they were necessary to right discriminations by unions against Negroes (Pet. 28-30). But there is nothing in the Norris-La Guardia Act which makes an exception for a Negro. No matter what petitioners say about those cases, one who reads them cannot avoid seeing what this Court said it was doing. In each of those cases this Court felt that the Norris-La Guardia Act would prevent judicial action unless the federal courts had been authorized to enforce the Railway Labor Act. Thus, distinguish as they will such a case as *Graham* v. *Brotherhood of L. F. & E.*, 338 U. S. 232, petitioners cannot avoid this Court's statement (pp. 239-240):

> "Nor does the Norris-La Guardia Act contain anything to suggest that it would deprive these Negro firemen of recourse to equitable relief from illegal discriminatory representation by which there would be taken from them their seniority and ultimately their jobs. Conversely there is nothing to suggest that, in enacting the subsequent Railway Labor Act provisions insuring petitioners' right to nondiscriminatory representation by their bargaining agent, Congress intended to hold out to them an illusory right for which it was denying them a remedy. If, in spite of the *Virginian, Steele,* and *Tunstall* cases, *supra,* there remains any illusion that under the Norris-La Guardia Act the federal courts are powerless to enforce these rights, we dispel it now. The District Court has jurisdiction to enforce by injunction petitioners' rights to nondiscriminatory representation by their statutory representative."

See also *Steele* v. *Louisville & N. R. Co.*, 323 U. S. 192, 207; *Tunstall* v. *Brotherhood of L. F. & E.*, 323 U. S. 210; *Rolfes* v. *Dwellingham*, 198 F. 2d 591, 594 (C. A. 8, 1952).

Disregarding the fact that the Norris-La Guardia Act "applies both to organizations of labor and organizations

of capital" (S. Rep. No. 163, 72d Cong., 1st sess., p. 19 (1932)), petitioners stress the fact that the injunctions in the *Railway Clerks* case of 1932 and the *Virginian* case of 1937 were against employers. From this they argue that the Norris-La Guardia Act meant that a union was protected from an injunction. But the courts found it necessary to enjoin unions in order to protect Negroes' rights in the later cases. The injunctions in the later cases necessarily forbade threats of strikes, because that was the weapon the unions were using to enforce their discrimination. It is impossible to see how this Court can read into the Norris-La Guardia Act an immunity for petitioners without really overruling these cases, as petitioners and their *amici* may well prefer.

Amicus Railway Labor Executives Association relies on *Brotherhood of Railroad Trainmen* v. *Toledo, Peoria & Western Railroad*, 321 U. S. 50. The applicability of the Norris-La Guardia Act was conceded there. That case involved contract demands, the "major disputes" under the Railway Labor Act. They are governed by different procedures than grievances. There the carrier refused to arbitrate before applying for an injunction. It was for this reason that the Court held that no relief should be given to the carrier.

In contrast to the present case, the union there had exhausted all that the Railway Labor Act required of it. Unlike this case, the carrier in *Toledo* was not asking the Court to enforce the Railway Labor Act, but, rather, was itself evading part of the demands of that Act. Here the carrier has done all it can under the Railway Labor Act.

The basic difference between the *Toledo* case and this is that there the plaintiff's suit was not brought to enforce the Railway Labor Act, whereas that is the very purpose of

this suit. Here the mandate of the Railway Labor Act can be enforced only by an injunction. Cf. *Steele* v. *Louisville & Nashville R. Co.*, 323 U.S. 192, 207.

In a case like this, the Eighth Circuit has also held that the Norris-La Guardia Act is not a bar to the entry of an injunction against calling a strike to bypass the Adjustment Board. In *Rolfes* v. *Dwellingham*, 198 F. 2d 591 (C.A. 8, 1952), the Trainmen struck over certain grievances of dining-car stewards they represented on the Missouri-Pacific Railroad. The railroad submitted the claim to arbitration in the face of the Trainmen's refusal to terminate the strike (at p. 592), and the ensuing award of a special Board of Adjustment caused the railroad to displace the plaintiff waiters-in-charge "under pressure" (at p. 594). The district court held that the waiters-in-charge were entitled to resort to the Adjustment Board. It enjoined the Trainmen from "in any manner" interfering with the railroad's compliance with this decree. The injunction therefore included interfering by strike, which had been resorted to earlier (see 198 F. 2d at 592). The *Rolfes* decree was issued for the same purpose as requested by the instant plaintiffs, namely, for "the purpose of affording opportunity for the administrative Board [National Railroad Adjustment Board] to function as contemplated by the [Railway Labor] Act" (198 F. 2d at p. 594). In affirming, the court of appeals discussed the Norris-La Guardia Act in language applicable here (198 F. 2d at p. 594):

> "Also we consider the decisions of the Supreme Court, in Graham v. Brotherhood of Locomotive Firemen and Enginemen, 338 U. S. 232, 70 S. Ct. 14, 94 L. Ed. 22; Virginian R. Co. v. System Federation, No. 40, 300 U. S. 515, 57 S. Ct. 592, 81 L. Ed. 789; Steele v. Louisville & Nashville R. Co., 323 U. S. 192, 65 S. Ct. 226, 89 L. Ed. 173; and Tunstall v. Brotherhood of Locomotive Firemen and Engineman, 323 U. S. 210, 65

> S. Ct. 235, 89 L. Ed. 187, are equally conclusive that the Norris-La Guardia Act does not deprive the federal courts of power to issue such an injunction as had been issued here in aid of the administrative Board and to preserve the right of the [plaintiff] waiters-in-charge to resort to the administrative procedure provided by the Congress under the Railway Labor Act."

Petitioners urge affirmance because Congress did not specifically provide for injunctions against strikes over grievances (Br. 13, 14, 37, 40, 43). Yet Congress did not provide for injunctions to enforce many other provisions of the Railway Labor Act and this Court has nevertheless held that they must be enforced by the injunctive process. Although petitioners conceded below that it would be proper to enjoin strikes in violation of Sections 5 First (b) and 10 of the Railway Labor Act (Br. 13-14, 37, 40), those Sections do not provide for injunctions either. Few, if any, of the commands of the Railway Labor Act are self-executing, but that has not been held to preclude appropriate judicial relief.

Similarly, the *amicus* Brotherhood of Locomotive Engineers concedes that there may be no strikes during mediations or the emergency board processes (Br. 7). If such strikes may be enjoined despite the Norris-La Guardia Act, there is no reason why strikes over grievances should not be similarly enjoined.

Amicus Railway Labor Executives Association admits (Br. 28) that the Norris-La Guardia Act does not apply when a court is called upon "to compel compliance with positive mandates of the Railway Labor Act." If this Court agrees with respondents' contention that Section 3 First of the Railway Labor Act contains a positive mandate, then even under the *amicus* Railway Labor Executives Association's interpretation of the Norris-La Guardia Act, an injunction must issue.

C. The 1934 Amendments Specifically Repeal Earlier Inconsistent Statutes.

As Judge Brown's dissent noted in the *Central of Georgia case* (229 F. 2d at p. 908), it is really unnecessary to determine whether the Railway Labor Act *pro tanto* repealed the Norris-La Guardia Act. Instead, the problem is one of accommodating the two statutes. Therefore, up to this time we have not mentioned the last pertinent amendment added by Congress in 1934. This was Section 8 of the 1934 statute (48 Stat. 1197, 45 U. S. C. § 161). This Section states in no uncertain terms, "All Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed."

If any other authority were needed for the careful reasoning and indisputable logic of this Court in the cases discussed in the preceding section, here is such statutory authority. Congress made the Adjustment Board procedure mandatory, as shown in Part I *supra*. If doing this was inconsistent with the Norris-La Guardia Act, then Section 8 of the 1934 Act says that the Norris-La Guardia Act is repealed insofar as it is inconsistent with Congress' desire.

As held in *United States* v. *Hutcheson*, 312 U. S. 219, 235, an earlier statute must be read in conjunction with later statutes:

> "The appropriate way to read legislation in a situation like the one before us, was indicated by Mr. Justice Holmes on circuit: 'A statute may indicate or require as its justification a change in the policy of the law, although it expresses that change only in the specific cases most likely to occur in the mind. The Legislature has the power to decide what the policy of the law shall be, and if it has intimated its will, however, indirectly, that will should be recognized and obeyed. The major

> premise of the conclusion expressed in a statute, the change of policy that induces the enactment, may not be set out in terms, but it is not an adequate discharge of duty for the courts to say: We see what you are driving at, but you have not said it, and therefore we shall go on as before.' *Johnson* v. *United States*, 163 F. 30, 32."

This was reiterated in *Clifford F. MacEvoy Co.* v. *United States*, 322 U. S. 102, 107:

> "However inclusive may be the general language of a statute, it 'will not be held to apply to a matter specifically dealt with in another part of the same enactment. . . . Specific terms prevail over the general in the same or another statute which otherwise might be controlling.' *Ginsberg & Sons* v. *Popkin*, 285 U. S. 204, 208."

CONCLUSION

There has been a growing tendency to strike over grievances,[7] which is the very menace that the Adjustment Board was designed to eliminate. Unless the judgment below remains undisturbed, strikes over grievances will continue to multiply and the Adjustment Board will become a hollow shell. Respondents are not asserting that the Railway Labor Act bans strikes over the "major disputes" after the processes of the Railway Labor Act have been exhausted. But the principal purpose of amending the Railway Labor Act in 1934 was to ban strikes over grievances, the "minor disputes," by providing compulsory arbitration of grievances by the Adjustment Board. This mandatory duty to process grievances before the Adjustment Board

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7. See pp. 5, 24-25 and 32 of the 16th, p. 5 of the 17th and 18th, and pp. 5, 21 and 23 of the 19th Annual Reports of the National Mediation Board for 1950, 1951, 1952 and 1953; "Railroad Labor Disputes and the National Railroad Adjustment Board," 18 Univ. of Chicago L. Rev. 303, 318 (1951).

must be enforced by the courts. The decisions under the Norris-La Guardia Act make it plain that the courts should enforce mandatory provisions of the Railway Labor Act.

The decision below should be affirmed.

Respectfully submitted,

KENNETH F. BURGESS,
WALTER J. CUMMINGS, JR.,
MARVIN A. JERSILD,
WAYNE M. HOFFMAN,
WILLIAM K. BACHELDER,
Attorneys for Respondents.

SIDLEY, AUSTIN, BURGESS & SMITH,
Of Counsel.

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APPENDIX

Section 2 of the Railway Labor Act (45 U.S.C. 151a) provides in part:

"GENERAL PURPOSES

"(1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; * * * (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions."

Section 2 First of the Railway Labor Act (45 U.S.C. 152 First) provides:

"GENERAL DUTIES

"It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Section 2 Tenth of the Railway Labor Act (45 U.S.C. 152 Tenth) provides in pertinent part:

"* * * *Provided*, That nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the per-

formance by an individual employee of such labor or service, without his consent."

Section 3 First (i) of the Railway Labor Act (45 U.S.C. 153 First (i)) provides:

"The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board wth a full statement of the facts and all supporting data bearing upon the disputes."

Section 3 First (k) of the Railway Labor Act (45 U.S.C. 153 First (k)) provides:

"(k) Any division of the Adjustment Board shall have authority to empower two or more of its members to conduct hearings and make findings upon disputes, when properly submitted, at any place designated by the division: *Provided, however,* That final awards as to any such dispute must be made by the entire division as hereinafter provided."

Section 3 First (w) of the Railway Labor Act (45 U.S.C. 153 First (w)) provides:

"(w) Any division of the Adjustment Board shall have authority, in its discretion, to establish regional adjustment boards to act in its place and stead for such limited period as such division may determine to be necessary. Carrier members of such regional boards shall be designated in keeping with rules de-

vised for this purpose by the carrier members of the Adjustment Board and the labor members shall be designated in keeping with rules devised for this purpose by the labor members of the Adjustment Board. Any such regional board shall, during the time for which it is appointed, have the same authority to conduct hearings, make findings upon disputes, and adopt the same procedure as the division of the Adjustment Board appointing it, and its decisions shall be enforceable to the same extent and under the same processes. A neutral person, as referee, shall be appointed for service in connection with any such regional adjustment board in the same circumstances and manner as provided in paragraph (1) hereof, with respect to a division of the Adjustment Board."

Section 3 Second of the Railway Labor Act (45 U.S.C. 153 Second) provides:

"Nothing in this section shall be construed to prevent any individual carrier, system, or group of carriers and any class or classes of its or their employees, all acting through their representatives, selected in accordance with the provisions of this Act, from mutually agreeing to the establishment of system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes of the character specified in this section. In the event that either party to such a system, group, or regional board of adjustment is dissatisfied with such arrangement, it may upon ninety days' notice to the other party elect to come under the jurisdiction of the Adjustment Board."

Section 8 of the 1934 Railway Labor Act (48 Stat. 1197, 45 U.S.C. 161) provides:

"If any section, subsection, sentence, clause or phrase of this Act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act. All Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed."